2-3-86
Vol. 51 No. 22
Pages 4131-4286

Federal Register

Monday
February 3, 1986

Briefings on How To Use the Federal Register—
For information on briefings in St. Louis, MO, and Denver, CO, see announcement on the inside cover of this issue.

Selected Subjects

Airports
Customs Service

Animal Drugs
Food and Drug Administration

Aviation Safety
Federal Aviation Administration

Communications Common Carriers
Federal Communications Commission

Fisheries
National Oceanic and Atmospheric Administration

Food Additives
Food and Drug Administration

Government Contracts
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Longshoremen
Employment Standards Administration

Organization and Functions (Government Agencies)
Customs Service

Packaging and Containers
Customs Service

Postal Service
Postal Service

Radio
Federal Communications Commission

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Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Radio Broadcasting
Federal Communications Commission

Surface Mining
Surface Mining Reclamation and Enforcement Office

Television
Federal Communications Commission

Loan Programs—Agriculture
Farmers Home Administration

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ST. LOUIS, MO

WHEN: March 11; at 9 am.

WHERE: Room 1612,
Federal Building,
1520 Market Street, St. Louis, MO.

RESERVATIONS: Delores O'Guin,
St. Louis Federal Information Center,
314-425-4109

DENVER, CO

WHEN: March 24; at 9 am.

WHERE: Room 239,
Federal Building,
1961 Stout Street, Denver, CO.

RESERVATIONS: Elizabeth Stout
Denver Federal Information Center,
303-236-7181

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FEDERAL LABOR RELATIONS AUTHORITY, GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY, AND FEDERAL SERVICE IMPASSES PANEL

5 CFR Ch. XIV

Regional Office; Address Change

AGENCY: Federal Labor Relations Authority (including the General Counsel of the Federal Labor Relations Authority) and Federal Service Impasses Panel.

ACTION: Final rule.

SUMMARY: This document amends Appendix A, paragraph (d)(2)(a) (45 FR 80467) of the rules and regulations of the Federal Labor Relations Authority (Authority), General Counsel of the Federal Labor Relations Authority (General Counsel), and Federal Service Impasses Panel (Panel), published at 5 CFR Part 2400 *et seq.*, (1985) to establish a new location and mailing address for the Authority's Philadelphia, Pennsylvania Sub-Regional Office within the Authority's New York, New York Regional Office. The Philadelphia, Pennsylvania Sub-Regional Office telephone numbers have not been changed.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: David L. Feder, Assistant General Counsel (202) 382–0834.

SUPPLEMENTARY INFORMATION: Effective January 28, 1980, the Authority, General Counsel and Panel published at 45 FR 3482, January 17, 1980, final rules and regulations to govern the processing of cases by the Authority, General Counsel and Panel under Chapter 71 of Title 5 of the United States Code (5 CFR Part 2400 *et seq.* (1985)). These rules and regulations are required by Title VII of the Civil Service Reform Act of 1978 and are set forth in 5 CFR Part 2400 *et seq.* (1985). Appendix A, paragraph (d) of the foregoing rules and regulations sets forth office addresses and telephone numbers of the Regional Directors of the Authority. This amendment sets forth the new location and mailing address of the Philadelphia, Pennsylvania Sub-Regional Office of the Authority. The Philadelphia, Pennsylvania Sub-Regional Office telephone numbers have not been changed. Accordingly, in Appendix A to Chapter XIV, paragraph (d)(2)(a) of the Authority, General Counsel, and Panel rules and regulations (5 CFR Part 2400 *et seq.* (1985)) is amended to read as follows:

Appendix A to 5 CFR Ch. XIV—Current Addresses and Geographic Jurisdictions

* * * * *

(d) The Office addresses of Regional Directors of the Authority are as follows:

* * * * *

(2) * * *

(a) *Philadelphia PA Sub-Regional Office*—105 S. 7th Street, 5th Floor, Philadelphia, Pennsylvania 19106, Telephone: FTS—597–1527, Commercial—(215) 597–1527.

(5 U.S.C. 7134)

Dated: January 28, 1986.

John C. Miller,

General Counsel, Federal Labor Relations Authority.

[FR Doc. 86–2254 Filed 1–31–86; 8:45 am]

BILLING CODE 6727-01-M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 420, 421, 424, 425, 431, and 432

[Doc. No. 3124S]

Grain Sorghum, Cotton, Rice, Peanut, Soybean, and Corn Crop Insurance Regulations; Sales Closing Date Extension

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Extension of sales closing date.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice of the extension of sales closing date for accepting applications for grain sorghum, cotton, rice, peanut, soybean, and corn crop insurance in certain south Texas counties wherein such insurance is offered, effective for the 1986 crop year only. This action is necessary because actuarial data filings in such counties have been delayed which has the effect of foreshortening the sales period. Therefore, additional time for applications to be accepted is being provided accordingly. The intended effect of this notice is to advise all interested parties of the extension of the sales closing date and to comply with the provisions of the grain sorghum, cotton, rice, peanut, soybean, and corn crop insurance regulations with respect to the Manager's authority to extend sales closing dates.

EFFECTIVE DATE: February 3, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: The sales closing date for accepting applications for crop insurance on grain sorghum, cotton, rice, peanut, soybean, and corn crop insurance in certain south Texas counties, on file in the service offices, is February 15, 1986. Because of a delay in filing actuarial data in such counties, resulting in a foreshortened marketing period, FCIC is extending the sales closing date in the counties listed below wherein such crop insurance is offered to March 3, 1986. Under the provisions of 7 CFR 420.7(b), 421.7(b), 424.7(b), 425.7(b), 431.7(b), and 432.7(b), the sales closing date for accepting applications may be extended by placing the extended date on file in the service office and by publishing a notice in the **Federal Register** upon determination that no adverse selectivity will result from such extension. If adverse conditions develop during the extended period, FCIC will immediately discontinue acceptance of applications.

Notice

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation herewith gives notice that the sales closing date of February 15, 1986, for accepting applications for grain sorghum, cotton, rice, peanut, soybean, and corn crop insurance under the provisions of 7 CFR Parts 420, 421, 424, 425, 431 and 432, respectively, in the following south Texas counties.

Aransas	Bexar
Atascosa	Brooks
Bandera	Calhoun
Bee	Cameron

Dimmit	McMullen
Duval	Maverick
Edwards	Medina
Frio	Nueces
Goliad	Real
Hidalgo	Refugio
Jackson	San Patricio
Jim Hogg	Starr
Jim Wells	Uvalde
Karnes	Val Verde
Kendall	Victoria
Kenedy	Webb
Kerr	Willacy
Kinney	Wilson
Kleberg	Zapata
La Salle	Zavala
Live Oak	

is hereby extended through the close of business on March 3, 1986, effective for the 1986 crop year only.

(Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended, (7 U.S.C. 1506, 1516))

Done in Washington, DC, on January 23, 1986.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-2239 Filed 1-31-86; 8:45 am]

BILLING CODE 3410-08-M

Farmers Home Administration

7 CFR Parts 1822, 1872, 1900, 1903, 1924, 1927, 1943, 1945, 1951, 1955, 1962 and 1965

Servicing of Real Estate Security

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) revises and redesignates its regulations regarding servicing of loans by real estate. This action is being taken to comply with an overall restructuring of FmHA regulations, and to incorporate the provisions of enacted legislation affecting these regulations. The intended effect of this action is to provide more responsive and equitable credit service to farmers and other rural residents.

EFFECTIVE DATE: February 3, 1986.

FOR FURTHER INFORMATION CONTACT: Chester Bailey, Chief, Emergency Loan Servicing and Property Management Branch, FmHA, USDA, Room 5432, South Agriculture Building, Washington, DC 20250, telephone (202) 382-1648.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined "nonmajor." This action has been determined "nonmajor" since the annual effect on the economy is less than $100 million and there will be no increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. FmHA revises and redesignates its regulations on servicing and liquidation of real estate security and certain note-only cases from Subpart A of Part 1872, to new Subpart A of Part 1965, Chapter XVIII, Title 7, Code of Federal Regulations. Also, amendments are made to other Parts to change references from Subpart A of Part 1872 to Subpart A of 1965 and to update references to FmHA forms.

Subpart A of Part 1900 is amended to state that non-program loan debtors/applicants are not eligible to receive any program benefits such as appeal rights. This subpart has also been amended to set forth the notification process to be used to notify borrowers of FmHA farmer program servicing options where FmHA holds a lien and another lienholder is proceeding in a foreclosure action to be consistent with Subpart A of Part 1965.

Subpart A of Part 1951 is amended to treat mineral royalty payments as income which may be used for prospective payments on FmHA loans. Also, lease payments can be used for prospective payments on FmHA loans.

Subpart A of Part 1955 is amended to provide a notification process for farmer program borrowers regarding adverse action and require that farmer program appeals be concluded before any adverse action is taken. Also, Subpart B of Part 1955 is amended to provide a notification process to farmer program borrowers of FmHA loan servicing options and notice to take adverse action in cases of abandoned security property.

Implementation of Subpart A of Part 1965 is imperative for present and future FmHA borrowers to fully utilize resources and maximize credit availability in times of economic stress. Many farmers must avail themselves of these authorities to continue in agriculture during this time of severe economic stress in the industry.

Many servicing actions permitted by Subpart A of Part 1872 required approval by the National Office. The submission of individual cases to the National Office for review was a time consuming process. In Subpart A of Part 1965, approval authorities are placed within various field offices to expedite servicing actions. County and District Offices are able to carry out actions which formerly required State or National Office concurrence. This will eliminate considerable time in documentation, correspondence, and mailing delays.

Subpart A of Part 1965 enables FmHA farmer program loans secured by real estate to be serviced in compliance with the applicable statutory authorities and administrative requirements implemented since the last major revisions to the regulation in 1975. In order for borrowers to be successful in their farming operations, they must be able to manage both real estate and debts secured by real estate. Subpart A of Part 1965 prescribes the authorities, policies, and routines for servicing loans secured by real estate. These servicing authorities provide borrowers with the opportunity to be successful and allow FmHA to protect the Government's interest. Subpart A of Part 1965 clarifies the servicing of loans to partnerships, cooperatives and corporations. It also specifically provides for the transfer and assumption of Emergency loss loans and Economic Emergency loans.

FmHA has reviewed the changes and determined that they are cost-effective since they will afford both individual and entity type farm borrowers the additional opportunity to maintain their property serving as security for FmHA loans, utilize the property to obtain other essential credit or dispose of all or part of the property by partial sale or transfer to other parties.

Various sections of Subpart A of Part 1965 incorporate the provisions of the Agricultural Credit Act of 1978 and the Emergency Agricultural Credit Adjustment Act of 1978, Pub. L. 95-334, Title II.

Discussion of Final Rule

A proposed rule was published in the **Federal Register** (49 FR 26072) on June 26, 1984. The proposal provided for a 60-day comment period. The comment period ended August 27, 1984. Comments were received from FmHA personnel who will administer the regulation. No comments were received from the public.

A summary of the major comments received and actions taken follows:

1. The use of proceeds from the sale of a portion of the security should be expanded to allow for the payment of junior liens and judgments necessary to clear title. Section 1965.13(f)(2) has been expanded to allow using proceeds to pay junior liens and judgment liens.

2. FmHA should not have to give post consent to a junior lien when a borrower places a junior lien on property securing an FmHA loan.

Section 1965.16(b) gives the conditions for continuing loans with borrowers who

place junior liens on security without FmHA consent.

The existence of a junior lien is not treated as a default provided the borrower pays FmHA loans as agreed, maintains the security, and meets all other conditions of the loan. The County Supervisor will continue to serve the loan to protect the Government's security interest.

3. In regard to FmHA's consent to borrowers' leasing security the requirement that the borrower or the borrower's immediate family continue to occupy the security as a home should be modified for cases where inability to occupy as a home is due to reasons beyond their control.

The requirement in § 1965.17(b) for the continued occupancy of the security as a home is changed to preclude the initiation of liquidation action provided the borrower does not enter into a lease for a term of more than 3 years or does not enter into a lease containing an option to purchase.

4. ORE loans should have their own classification code. ORE loans have been renamed Non Program (NP) loans. The Finance Office's new accounting system will provide an NP code for previously classified ORE loans.

5. In regard to subordinations, use of a 2-year-old appraisal should be permitted provided the appraiser documents that the appraisal reflects current market value and is adequate to describe the value of the security.

The recent history of changing market values of farm real estate indicates a 2-year period is too long for valid current market value determinations. Some areas of the United States have experienced as much as a 15 percent decline in values in consecutive years. Therefore, § 1965.12(d) remains unchanged and requires a current appraisal report when the existing appraisal report is more than 1 year old.

6. When real estate is taken as additional security for an annual operating advance, the mortgage filed should not list on the face of the instrument the other real estate mortgages. This only complicates the release of that mortgage when the annual operating loan is paid in full.

When making a servicing decision, FmHA considers the borrower's total FmHA debt. The current practice provides broader security coverage and encourages graduation which furthers FmHA's loan objectives.

7. Provisions for dwelling retention need to be expanded. The provisions for dwelling retention which were in the proposed rule have been deleted. Amendments to this regulation will be made to incorporate the provision of the Homestead Protection provision, Section 1321 of Pub. L. 99–198, signed into law by President Reagan on December 23, 1985.

Other major changes from the proposed rule are as follows:

1. Section 1965.1 is revised to identify the specific program loans covered by this regulation and to make editorial changes.

2. Section 1965.2 is revised to further clarify the general policies for servicing real estate security and to make editorial changes.

3. Section 1965.7(d) is added to include a definition for Farmer Program loans.

4. Section 1965.7(d) is redesignated as paragraph (e).

5. Section 1965.7 (e) and (f) are revised and redesignated as paragraphs (f) and (g).

6. Section 1965.7(h) is added to include a definition for Non-Program (NP) loans.

7. Section 1965.7 (g), (h) and (i) are redesignated as paragraphs (i), (j) and (k) respectively.

8. Section 1965.11(b) is revised for clarification and to refer to other FmHA regulations. Paragraph (b)(1) has been redesignated (b)(3), paragraph (b)(2) has been redesignated (b)(4), and paragraph (b)(3) has been redesignated (b)(2).

9. Section 1965.11(c) (2)(i) through (2)(iii) are revised. Paragraph (c)(2)(i) is retitled "Decision to pay off the Prior Lien." Paragraph (c)(2)(ii) is retitled "Decision not to pay off the Prior Lien" and provides instructions on how borrowers will be notified by the County Supervisor when FmHA decides not to pay off the prior liens. Paragraphs (c)(2)(ii) and (iii) are redesignated paragraphs (c)(2)(ii) (A) and (B) respectively and paragraph (c)(8) is retitled as "Acquisition of Property by Exercise of Government Redemption Rights" and redesignated as paragraph (c)(2)(iii). Paragraph (c)(2)(i) has been eliminated, and the reference to bidding is now found in paragraph (c)(2)(ii)(A).

10. Section 1965.11(c)(3) has been revised to provide for notifying borrowers of various servicing alternatives when FmHA learns that a junior lienholder is foreclosing or has foreclosed and the property is sold subject to an FmHA mortgage, and to reference applicable portions of § 1955.15 of Part 1955 of this chapter.

11. Section 1965.11(d) has been revised to further clarify the actions to be taken on servicing security after divorce.

12. Section 1965.12(b)(3) is revised to include Special Livestock (SL), Economic Opportunity (EO), and Rural Housing Loans for farm service buildings (RHF). This paragraph permits FmHA to subordinate its lien to another lender if the other lender's funds will be used to reduce the FmHA debt.

13. Section 1965.12(g) is retitled "Reamortizing Existing FmHA Debts other than SFH."

14. Section 1965.13(a) is revised to state that the sale of minerals by unit or lump sum payments will be considered as disposition of a portion of the security, *except:* For Farmer Program loans approved after Decembr 23, 1985, the sale of such products will be considered a disposition of security *only* if the rights to the products were specifically included as part of the appraised value of the real estate securing the loan. This revision was made to comply with Section 1305 of Pub. L. 99–198 regarding mineral rights as collateral.

15. Section 1965.13(b) is revised for clarification to provide guidance for handling of easements and rights-of-way.

16. Section 1965.13(e)(1) is changed to clarify that loan approval authorities in Exhibit C of FmHA Instruction 1901–A cannot be exceeded.

17. Section 1965.13(e)(3)(i)(A) and (B) are revised to make editorial changes and to refer to § 1965.110 of Subpart C of Part 1965 of this chapter. Paragraph (e)(3)(i)(B) of this section is revised to state for Farmer Program loans approved after December 23, 1985, if the rights to minerals were not included in the appraisal, then FmHA has no lien on the right to minerals located under the real estate.

18. Section 1965.13(f) is revised to further clarify the use of proceeds from the sale of security property. Paragraph (f)(2) of this section is revised to state that any funds not needed for taxes will be applied in the manner set out in this paragraph (f). The reference to annual installments and extra payments has been removed.

19. Section 1965.13(f) is revised to remove the requirement that any amounts not applied to any prior lien, inadequately secured FmHA loans, other creditor or used for development, must be applied to the FmHA lien with the highest priority.

20. Section 1965.13(i) is added to state that if FmHA is unable to approve a partial sale, the partial sale cannot be used as the basis for liquidation provided the spouse or children become the owners of the property, or an intervivos trust becomes the owner of the property, so long as the borrower is a beneficiary and there is no change in occupancy of the property.

21. Section 1965.16 is revised for clarification. Paragraph (a)(5) is

removed and the reference to 502 and 504 RH loans is discussed in the introductory text of this section.

22. Section 1965.17 is retitled "Lease of Security" and rewritten for clarification. Paragraphs (a) through (d) of this section are revised to set forth the criteria used when the County Supervisor learns that a borrower is leasing or intends to lease all or a portion of the security. Accordingly, paragraph (a) states the general provisions for leasing of security; paragraph (b) states what conditions the initiation of liquidation would be taken; (c) provides for leasing of Non-Program (NP) loan security; and (d) provides for the leasing of mineral rights. Paragraph (d) specifically states that a borrower does not need FmHA's consent to lease the mineral rights securing a farmer program loan approved after December 23, 1985, unless the rights were included on FmHA's real estate appraisal. Also, if FmHA consent is needed and consent is given, lease payments can be used for prospective payments on FmHA loans. This revision complies with Section 1310 of Pub. L. 99–198 regarding the leasing of mineral rights.

23. Section 1965.21 is retitled "Assignment and Release of Soil Conservation or Similar Programs" and revised to further clarify the action the County Supervisor may take regarding the assignment on income to be received by borrowers under USDA programs or similar contracts to protect the financial interest of the Government or to facilitate loan servicing.

24. Section 1965.23 is revised to refer the servicing of SFH loans to Subpart C of Part 1965 of this chapter.

25. Section 1965.26, the introductory paragraph is removed and the information therein has been clarified and included in paragraphs (a) through (f) of this section. Paragraph (a)(1) and (2) have been revised to make editorial changes. Paragraph (a)(3) of this section is redesignated as paragraph (b) and retitled "*Involuntary Liquidation*" and revised to set forth the criteria for notifying borrowers of FmHA's intent to take adverse action and loan servicing actions available to the borrower. Paragraph (c) of this section is retitled "Multiple Loans and Loans Secured by Both Real Estate and Chattels," and revised to establish criteria for continuing with a borrower who has one or more FmHA loans secured by real estate. Paragraph (d) of this section has been rewritten to provide guidance to County Supervisors on how to service a borrower's farmer program loan(s) if the borrower no longer operates the farm. Paragraph (e) of this section is revised for clarification and sets forth the criteria to permit a borrower to pay the account under an accelerated repayment agreement if the borrower is able to graduate to other credit. Paragraph (a)(9) is redesignated as paragraph (f) and the provision on dwelling retention has been deleted. This subject will be covered in a regulation to be published containing provisions of the Homestead Protection Amendment of Section 1321 of the Food Security Act of 1985.

26. Section 1965.27, the introductory paragraph is revised for clarification and states that farmer program borrowers must be notified of loan servicing options within 3 work days after the borrower contacts the County Supervisor inquiring about a transfer. Paragraph (a) of this section has been revised to clarify that loan approval authorities in Exhibit C of FmHA Instruction 1901–A cannot be exceeded. Paragraph (b)(4) of this section has been redesignated paragraph (b)(5) and paragraph (b)(4) of this section retitled "Payment of Costs" to clarify how costs in transfers and assumptions will be handled.

27. Section 1965.27(b)(6) is retitled "Transfer of a Portion of the Security," and redesignated as paragraph (b)(6) and paragraph (b)(5)(vii) is revised to clarify that new stockholders, members, or partners entering the organization entity must assume personal liability on the loan in transfer and assumption situations.

28. Section 1965.27(b)(8) is retitled "Partial Transfer and Assumption."

29. Section 1965.27(b)(8) and (9) are redesignated paragraphs (b) (9) and (10) respectively.

30. Section 1965.27(b)(9) is retitled "Consent of Other Lienholders" and redesignated paragraph (b)(11).

31. Section 1965.27(b) (10) through (17) are redesignated paragraphs (b) (12) through (19).

32. Section 1965.27(b)(20) entitled "Environmental Requirements" is added referring to the applicable environmental requirements of Subpart G of Part 1940 of this chapter.

33. Section 1965.27(c) is retitled "Assumption of Loans by Eligible Transferees" and rewritten to clarify how a loan may be assumed on eligible rates and terms. Paragraph (l)(i) has been retitled "SFH Assumptions," to refer only to single family housing loans. Paragraph (l)(ii) has been retitled "NP loans" and paragraph (l)(iii) has been retitled, "EE, SL, and Other Emergency Type Loans No Longer Being Made," to specifically include EE loans.

34. Section 1965.27(d) is retitled, "Assumption of Loans By Ineligible Transferees," and has been revised to clarify the procedure for processing assumptions of loans to ineligible transferees. Paragraph (d)(2) of this section has been retitled "Terms—Other Than SFH;" paragraph (d)(3) has been retitled, "Terms—SFH Loans;" paragraph (d)(5) has been retitled "NP Loans."

35. Section 1965.27(e) is revised to clarify the action to be taken by the County Supervisor when a borrower conveys security to a person who is ineligible or unwilling to assume the FmHA debt in accordance with FmHA regulations.

36. Section 1965.27(f) if revised to state that the Administrator must approve the release of liability when the transferor's remaining outstanding FmHA debt after a transfer and assumption exceeds $25,000.

37. Section 1965.27(g) is revised to clarify how funds in the supervised bank account will be applied to FmHA loans in transfer and assumption situations.

38. Section 1965.27(g)(2)(iv) is rewritten and the table used as a guide by the County Supervisor to distribute forms is now Exhibit C of this subpart (available in any FmHA office). Paragraph (g)(2)(v) is added to identify the transfer docket items to be included in the preparation and distribution of a transfer docket.

39. Section 1965.27(g)(10), "Transfer of Unused Development Funds," is now covered under paragraph (g)(1).

40. Section 1965.31(c) is revised to clarify provisions to be placed on notes evidencing FmHA loans when additional security will be taken.

41. Section 1965.33 is retitled "Cosigners SFH loans."

42. Section 1965.34 is retitled "Non-Program (NP) loans" which were previously classified as ORE loans. Paragraphs (a) through (c) of this section have been rewritten to clarify how NP loans will be serviced. Paragraph (a) specifies how subordinations will be handled; paragraph (b) sets forth when consent may be given for partial release, sale, exchange or other disposition of a portion of or interest in security. Paragraph (c) states when voluntary conveyance will be approved; paragraph (d) explains when transfers may be approved. Paragraph (e) covers action to be taken by FmHA in cases of default. Paragraph (f) explains leases; and paragraph (g) states that NP debtors are not subject to the graduation requirements in Subpart F of Part 1951 of this chapter.

43. Section 1965.35 is revised to clarify the Administrator's authority to make an exception to any requirements of this Subpart not inconsistent with the authorizing statute if the Administrator

finds that application of the requirements would adversely affect the interest of the Government.

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.410—Low Income Housing Loans
10.416—Soil and Water Loans
10.417—Very Low-Income Housing Repair Loans and Grants

Intergovernmental consultation in accordance with 7 CFR Part 3015, Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities" is not applicable, except in the case of soil and water (SW) loans. This program is listed in the Catalog of Federal Domestic Assistance under No. 416 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1965

Foreclosure, Loan programs—agriculture, Rural areas.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 1822—RURAL HOUSING LOANS AND GRANTS

1. The authority citation for Part 1822 is revised to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart G—Rural Housing Site Loan Policies, Procedures, and Authorizations

2. Section 1822.275 is amended by revising paragraph (c) to read as follows:

§ 1822.275 Actions after sites are developed.

* * * * *

(c) The proceeds from sale of the building sites will be applied on the RHS loan and any prior lien or, with the prior approval of the National Office, used in a manner consistent with the purpose of the loan and the security interest of the Government. The sites will be released from the mortgage in accordance with § 1965.110 of Subpart C of Part 1965 of this chapter or otherwise in accordance with prior approval of the National Office.

PART 1872—[REMOVED]

3. The authority citation for Part 1872 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

3a. Part 1872 is removed and reserved.

PART 1900—GENERAL

4. The authority citation for Part 1900 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Farmers Home Administration Appeal Procedure

5. Section 1900.53 is amended by revising paragraph (a)(15) to read as follows:

§ 1900.53 Decisions which are not appealable.

(a) * * *

(15) Non-Program loan debtors are not eligible to receive any program benefits such as appeal rights.

* * * * *

PART 1903—VOLUNTARY DEBT ADJUSTMENT

6. The authority citation for Part 1903 is revised to read as follows:

Authority: 7 U.S.C. 1989; CFR 2.23, 2.70.

Subpart A—Voluntary Debt Adjustment

7. Section 1903.2 is amended by revising paragraph (b) to read as follows:

§1903.2 Policy.

* * * * *

(b) Debts owed to the FmHA will not be adjusted pursuant to this subpart but will be considered for settlement in accordance with Part 1864 of this chapter (FmHA Instruction 456.1) or for release of personal liability in accordance with Subpart A of Part 1965 of this chapter.

PART 1924—CONSTRUCTION AND REPAIR

8. The authority citation for Part 1924 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Planning and Performing Construction and Other Development

9. Section 1924.5 is amended by revising paragraph (g)(4) to read as follows:

§ 1924.5 Planning development work.

* * * * *

(g) * * *

(4) Releases requested by the borrower or the buyer will be processed in accordance with applicable release procedures contained in Subpart A of Part 1965 of this chapter, or Subpart C of Part 1965 of this chapter, as appropriate.

* * * * *

Subpart B—Management Advice to Individual Borrowers and Applicants

10. Section 1924.51 is revised to read as follows:

§ 1924.51 General.

This subpart sets forth policies for providing management advice to farmer programs loan individual applicants and borrowers. The term "individual" as used in this subpart applies to individuals and to farming partnerships, corporations and cooperatives. The term "farmer program loan" as used in this subpart includes Farm Ownership (FO), Soil and Water (SW), Operating (OL), Emergency (EM), Economic Emergency (EE), Recreation (RL), Special Livestock (SL), and Economic Opportunity (EO) loans, and/or (RHF) Rural Housing Loans for farm service buildings. This subpart applies to insured farmer program loan applicants/borrowers who depend on farm income for loan repayment. It also includes Rural Housing (RH) borrowers who are also indebted for a Farmer Program loan that is not collection-only or a judgment account, and those FO, SW and/or OL loan applicants and borrowers who use the services of a "New Full-Time Family Farmer and Rancher Development Committee." (See Exhibit A of this subpart). This subpart does not apply to individuals who owe non-program loans (defined in § 1965.7(h) of Subpart A of Part 1965 of this chapter).

11. In Section 1924.72 the introductory text is revised to read as follows:

§ 1924.72 Borrowers who receive Forms FmHA 1924–25 and 1924–26.

Borrowers will receive Forms FmHA 1924–25 and 1924–26 along with form FmHA 1924–14 before a farmer program loan is involuntarily liquidated (see § 1965.26(b) of Subpart A of Part 1965 of this chapter and §§ 1962.40 and 1962.49 of Subpart A of Part 1962 of this chapter) and when an account is more than $100

delinquent on December 31 (see § 1924.71 of this subpart). These forms will also be provided to borrowers who have made unauthorized dispositions of security, who have stopped farming, or who have otherwise breached their loan agreements with FmHA. These forms will be provided, for information only, when a farmer program loan borrower files bankruptcy (see § 1962.47 of Subpart A of Part 1962 of this chapter). Form FmHA 1924–25 tells borrowers that FmHA intends to liquidate their loans (which will include terminating any previously agreed-upon releases of sales proceeds) and tells borrowers exactly why FmHA plans to take such action. The form explains that the servicing options described in Form FmHA 1924–14 are available, and also explains that FmHA will proceed to liquidate a borrower's loans unless the borrower applies for at least one of the servicing options, appeals the adverse action using FmHA's administrative appeals procedure (found at Subpart B of Part 1900 of this chapter), cures existing defaults, or liquidates the loans. Borrowers who receive Form FmHA 1924–25 will also receive Form FmHA 1924–26. This form must be completed to show whether the borrower wants to apply for servicing options, to appeal, to cure the default or to liquidate.

* * * * *

PART 1927—FEDERAL STATUTE OF LIMITATIONS

12. The authority citation for Part 1927 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Federal Statute of Limitations

13. Section 1927.7, is amended by revising paragraph (c)(3) to read as follows:

§ 1927.7 Servicing contract claims.

* * * * *

(c) * * *

(3) Settling the debt according to Part 1864 of this Chapter (FmHA 456.1) when the borrower is eligible; or

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

14. The authority citation for Part 1943 is revised to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

15. Section 1943.38 is amended by revising the introductory text of paragraph (f) to read as follows:

§ 1943.38 Loan closing actions.

* * * * *

(f) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be reduced will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter including provisions for written consent of any prior lienholder. When the County Supervisor deems it advisable, assignments also may be taken on all or a portion of income to be derived from nondepleting sources such as income from bonus payments or annual delay rentals. Such income will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter.

* * * * *

16. Section 1943.42 is revised to read as follows:

§ 1943.42 Servicing.

FO loans will be serviced in accordance with Subpart A of Part 1965 of this chapter. Chattel security for FO loans will be serviced in accordance with Subpart A of Part 1962 of this chapter.

17. Section 1943.44 is revised to read as follows:

§ 1943.44 Subordinations.

Subordinations in favor of other lenders will be processed in accordance with Subpart A of Part 1965 of this chapter.

18. Paragraph III of Exhibit A to Part 1943 is revised to read as follows:

Exhibit A—Farmers Home Administration Loans to Entrymen on Unpatented Public Lands

* * * * *

III. *Mortgage on Real Estate for Additional Security.* When it is deemed advisable to take a mortgage on the homestead or desertland entry as additional security or to otherwise protect the interests of the FmHA, a real estate mortgage will be taken on such entry. The mortgage will be taken as authorized in Subpart A of Part 1965 of this chapter. In such a case, a copy of the real estate mortgage will be sent to BLM and, if the farm is located in Federal reclamation project, a copy of the mortgage also will be sent to the BR.

* * * * *

Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations

19. Section 1943.88 is amended by revising the introductory text of paragraph (f) to read as follows:

§ 1943.88 Loan closing actions.

* * * * *

(f) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be reduced will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter, including provisions for written consent of any prior lienholder. When the County Supervisor deems it advisable, assignments also may be taken on all or a portion of income to be derived from nondepleting sources such as income from bonus payments or annual delay rentals. Such income will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter.

* * * * *

20. Section 1943.92 is revised to read as follows:

§ 1943.92 Servicing.

SW loans will be serviced in accordance with Subpart A of Part 1965 of this chapter. Chattel security for SW loans will be serviced in accordance with Subpart A of Part 1962 of this chapter. Bureau of Reclamation (BR) loans made during the period August 19, 1977, through September 30, 1977, will be serviced in the same manner as Soil and Water loans. See Exhibit A, "Memorandum of Understanding Between the Bureau of Reclamation, Department of Interior, and the Farmers Home Administration, Department of Agriculture" for additional information on these loans.

21. Section 1943.94 is revised to read as follows:

§ 1943.94 Subordinations.

Subordinations in favor of other lenders will be processed in accordance with Subpart A of Part 1965 of this chapter.

Subpart C—Insured Recreation Loan Policies, Procedures and Authorizations

22. Section 1943.138 is amended by revising the introductory text of paragraph (f) to read as follows:

§ 1943.138 Loan closing actions.

* * * * *

(f) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be reduced will be assigned and disposed of in accordance with Subpart A of Part 1965 of this Chapter, including provisions for written consent of any prior lienholder. When the County Supervisor deems it advisable, assignments also may be taken on all or a portion of income to be derived from nondepleting sources such as income from bonus payments or annual delay rentals. Such income will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter.

* * * * *

23. Section 1943.142 is revised to read as follows:

§ 1943.142 Servicing.

Recreation loans will be serviced in accordance with Subpart A of Part 1965 of this chapter. Chattel security for RL loans will be serviced in accordance with Subpart A of Part 1962 of this chapter.

24. Section 1943.144 is revised to read as follows:

§ 1943.144 Subordinations.

Subordinations in favor of other lenders will be processed in accordance with Subpart A of Part 1965 of this chapter.

PART 1945—EMERGENCY

25. The authority citation for Part 1945 is revised to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Economic Emergency Loans

26. Section 1945.135 is revised to read as follows:

§ 1943.135 Loan servicing.

Loans will be serviced in accordance with Parts 1806 and 1863 (FmHA Instructions 426.1, and 425.1, respectively) and Subpart A of Parts 1962 and 1965 of this chapter.

Subpart D—Emergency Loan Policies, Procedures, and Authorizations

27. Section 1945.169 is amended by revising paragraph (c)(3) to read as follows:

§ 1945.169 Security requirements.

* * * * *

(c) * * *

(3) When security is taken under this subsection (c) of this section it will be serviced in accordance with Subpart A of Part 1962 of this chapter, if chattels, and Subpart A of Part 1965 of this chapter, if real estate.

* * * * *

28. Section 1945.192 is revised to read as follows:

§ 1945.192 Loan servicing.

Loans will be serviced under Subpart A of Part 1806 (FmHA Instruction 426.1), Part 1863 (FmHA Instruction 425.1), Subpart A of Part 1962 and Subpart A of Part 1965 of this chapter.

PART 1951—SERVICING AND COLLECTIONS

29. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1980; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Account Servicing Policies

30. Section 1951.8 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1951.8 Types of payments.

(a) *Regular payments.* Regular payments are all payments other than extra payments and refunds. Usually, regular payments are derived from farm income, as defined in § 1962.4(j) of Subpart A of Part 1962 of this chapter. Regular payments also include payments derived from sources such as Agricultural Stabilization and Conservation Service payments (other than those referred to in paragraph (b) of this section), off-farm income, inheritances, life insurance, mineral royalties and income from mineral leases (see § 1965.17(d) of Subpart A of Part 1965 of this chapter), including income from leases or bonuses. Regular payments in the case of a Section 502 RH loan to an applicant involved in a mutual self-help project will include loan funds advanced for the payment of any part of the first and second installments. All payments to the Finance Office by direct payment borrowers are considered regular payments.

(b) *Extra payments.* Extra payments are payments derived from:

(1) Sale of chattels other than chattels which will be sold to produce farm income or real estate security, including rental or lease of real estate security of a depreciating or depleting nature.

(2) Refinancing of the real estate debt.

(3) Cash proceeds of real property insurance as provided in Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1).

(4) A sale of real estate not mortgaged to the Government, pursuant to a condition of loan approval.

(5) Agricultural Conservation Program payments as provided in Subpart A of Part 1941 of this chapter.

(6) Transactions of a similar nature which reduce the value of security other than chattels which will be sold to produce farm income.

* * * * *

31. In Section 1951.33 the introductory text is revised to read as follows:

§ 1951.33 Consolidation and rescheduling of OL, SL, and EO loans, EE operating type loans and EM loans made for Subtitle B purposes.

All borrowers are expected to repay their loans according to planned repayment schedules. However, circumstances may occur which will not permit borrowers to pay as scheduled or to refinance the loans. This section explains how to consolidate and reschedule *existing* loans providing the borrower agrees to such actions. Non-Program loan debtors are not eligible to receive any program benefits including consolidation or rescheduling. See § 1965.34 of Subpart A of Part 1965 of this chapter.

* * * * *

32. In Section 1951.40 the introductory text is revised to read as follows:

§ 1951.40 Reamortization of FO, SW, RL, RHF, EE or EM loans made for real estate purposes.

All borrowers are expected to repay their loans according to planned repayment schedules. However, circumstances may occur which will not permit borrowers to pay as scheduled or to refinance loans. This section explains how the County Supervisor can reamortize existing loans. Non-Program loan debtors are not eligible to receive any program benefits including reamortization. See § 1965.34 of Subpart A of Part 1965 of this chapter.

* * * * *

33. Section 1951.44 is amended by revising paragraph (k) to read as follows:

§ 1951.44 Deferral of existing OL, FO, SW, RL, EM, EO, SL, RHF, and EE loans.

* * * * *

(k) *Increase in repayment ability.* At the time the County Supervisor makes the analysis required by Subpart B of Part 1924 of this chapter, the County Supervisor will determine whether the borrower has had a substantial increase in income and repayment ability. If an increase is substantial enough to enable the borrower to graduate, the case will

be handled in accordance with Subpart F of Part 1951 of this chapter. If an increase would enable the borrower to make some payments during the deferral period, the County Supervisor will ask (in writing) the borrower to sign a Form FmHA 440–9, "Supplementary Payment Agreement," within 30 days of the date of the written request. If the borrower does not sign a Form FmHA 440–9 within the required time, the borrower's account will be liquidated in accordance with Subpart A of Part 1962 or Subpart A of Part 1965 of this chapter.

Subpart L—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Farmer Programs

34. Section 1951.561, is amended by revising paragraph (a)(1)(i) to read as follows:

§ 1951.561 Servicing options in lieu of liquidation or legal action.

* * * * *

(a) * * * (1) * * *

(i) Execution of Form FmHA 1965–11, "Accelerated Repayment Agreement," according to § 1965.26(e) of Subpart A of Part 1965 of this chapter, for loans secured by real estate, or rescheduling according to Subpart A of this part, for loans not secured by real estate, based on the borrower's repayment ability.

* * * * *

Subpart M—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Single Family Housing

35. Section 1951.612 is amended by revising paragraph (a)(1)(iii) to read as follows:

§ 1951.612 Servicing options in lieu of liquidation or legal action to collect.

* * * * *

(a) * * *

(1) * * *

(iii) If the recipient was not eligible for a loan, of if the loan was approved for unauthorized purposes as outlined in paragraph (a)(1)(iv) of § 1951.604 of this subpart, the recipient may be allowed to enter into an accelerated repayment agreement according to § 1965.125(a)(4) of Subpart C of Part 1965 of this chapter, if a SFH loan, except that the above-moderate interest rate which was in effect on the date the loan was approved will be used according to Exhibit C of this Subpart (available in any FmHA office). This provision should be used only where repayment ability can be projected. A loan serviced according to paragraph (a)(1)(iii) of this section will be reclassified as an NP loan.

* * * * *

PART 1955—PROPERTY MANAGEMENT

36. The authority citation for Part 1955 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; CFR 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

37. § 1955.2 is revised to read as follows:

§ 1955.2 Policy.

When it has been determined in accordance with applicable loan servicing regulations that further servicing will not achieve loan objectives and that voluntary sale of the property by the borrower (except for Multiple Family Housing (MFH) loans subject to prepayment restrictions) cannot be accomplished, the loan(s) will be liquidated through voluntary conveyance of the property to FmHA or by foreclosure as outlined in this subpart. For MFH loans subject to the prepayment restrictions, voluntary liquidation may be accomplished only through voluntary conveyance to FmHA in accordance with applicable portions of § 1955.10 of this subpart. Non-Program loan debtors will be liquidated as provided in § 1965.34(e) of Subpart A of Part 1965 of this chapter.

38. Section 1955.15 is amended by revising paragraph (d)(1) and the introductory text of paragraph (d)(2) to read as follows:

§ 1955.15 Foreclosure by the government of loans secured by real estate.

* * * * *

(d) * * *

(1) *Prior lien(s).* If there is a prior lien, all foreclosure alternatives should be explored including whether FmHA will give the prior lienholder the opportunity to foreclose; join in the action if the prior lienholder wishes to foreclose; or foreclose the FmHA loan(s), either settling the prior lien or foreclosing subject to it. The provisions of § 1965.11(c) of Subpart A of Part 1965 of this chapter must be followed for loans serviced under Subpart A of Part 1965. The assistance of OGC should be obtained in weighing the alternatives, with the objective being to pursue the course which will result in the greatest net recovery by the Government. After it is decided which option will be most advantageous to the Government, the approval official, either directly or through a designee, will contact the prior lienholder to outline FmHA's position. If State laws affect this action, a State Supplement will be issued with the advice of OGC to establish the procedure to be followed.

(2) *Acceleration of account.* Subject to paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii), of this section, the account will be accelerated using a notice substantially similar to Exhibits B, C, D, or E of this subpart (available in any FmHA office), as appropriate, to be signed by the official who approved the foreclosure. Loans secured by chattels must be accelerated at the same time as loans secured by real estate in accordance with § 1965.26(c) of Subpart A of Part 1965 of this chapter. The notice will be sent by certified mail, return receipt requested, to each obligor individually, addressed to the last known address. If different from the property address and/or the address the Finance Office uses, a copy of the notice will also be mailed to the property address and the address currently used by the Finance Office. (In chattel liquidation cases which have been referred for civil action under Subpart A of Part 1962 of this chapter, the Finance Office will be sent a copy of Exhibit D or E. County Office and Finance Office loan records will be adjusted to mature the entire debt in such cases). If a signed receipt for at least one of these acceleration notices sent by certified mail is received, no further notice is required. If no receipt is received, a copy of the acceleration notice will be sent by regular mail to each address to which the certified notices were sent. This type mailing will be documented in the file. A State Supplement may be issued if OGC advises different or additional language or format is required to comply with State laws or if notice and mailing instructions are different from that outlined in this paragraph. A conformed copy of the acceleration notice will be forwarded to the servicing official and, *except* for Farmer Program cases, to the hearing officer identified in the notice according to Subpart B of Part 1900 of this chapter. Farmer Program appeals will be concluded before acceleration. For MFH loans, a copy of the acceleration letter will also be forwarded to the National Office, ATTN: MFH Servicing and Property Management Division, for monitoring purposes. Accounts may be accelerated as follows:

* * * * *

Subpart B—Management of Property

39. Section 1955.53 is amended by redesignating paragraphs (e) through (n) as (f) through (o) and adding a new paragraph (e) to read as follows:

§ 1955.53 Definitions.

* * * * *

(e) *Farmer program loans.* This includes Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), and Special Livestock (SL) loans, and Rural Housing Loans for farm service buildings (RHF).

* * * * *

40. Section 1955.55 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 1955.55 Taking abandoned real or chattel property into custody and related actions.

(a) *Determination of abandonment.* (Multiple housing type loans will be handled in accordance with § 1965.75 of Subpart B of Part 1965 of this chapter.) When it appears a borrower has abandoned security property, the servicing official shall make a diligent attempt to locate the borrower to determine what the borrower's intentions are concerning the property. This includes making inquiries of neighbors, checking with the Postal Service, utility companies, employer(s) if known, and schools, if the borrower has children, to see if the borrower's whereabouts can be determined and an address obtained. A State Supplement may be issued if necessary to further define "abandonment" based on State law. If the borrower is not occupying or is not in possession of the property but has it listed for sale with a real estate broker or has made other arrangements for its care or sale, it will not be considered abandoned so long as it is adequately secured and maintained. Except for borrowers with Farmer Program loans, if the borrower has made no effort to sell the property and can be located, an opportunity to voluntarily convey the property to the Government will be offered the borrower in accordance with § 1955.10 of Subpart A of Part 1955 of this chapter. In farmer program cases, borrowers must receive Forms FmHA 1924–14, "Notice—Farmer Program Servicing Options Including Deferrals and Borrower Responsibilities," FmHA 1924–25, "Notice of Intent to Take Adverse Action," and FmHA 1924–26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action," and any appeal must be concluded before any adverse action can be taken. The County Supervisor will send these forms to the borrower's last known address as soon as it is determined that the borrower has abandoned security property.

(b) * * *

(1) For loans to individuals (except those with Farmer Program loans), if there are no prior liens, or if a prior lienholder will not take the measures necessary to protect the property, the County Supervisor shall take custody of the property, and a problem case report will be prepared recommending foreclosure in accordance with § 1955.15 of Subpart A of Part 1955 of this chapter, unless the borrower can be located and voluntary liquidation accomplished. Farmer Program loan borrowers will be sent the forms listed in paragraph (a) of this section and the provisions of § 1965.26 will be followed.

* * * * *

PART 1962—PERSONAL PROPERTY

41. The authority citation for Part 1962 is revised to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing and Liquidation of Chattel Security

42. Section 1962.34 is amended to revise the introductory text and paragraph (a)(2), introductory text of paragraph (b)(3), and paragraphs (f)(8) and (f)(12), and (g)(1) to read as follows:

§ 1962.34 Transfer of chattel security and EO property and assumption of debts.

Chattel and EO property may be transferred to eligible or ineligible transferees who agree to assume the outstanding loan, subject to the provisions set out in this section. A transfer and assumption may also be made when one or more of the borrowers or the former spouse and co-obligor of a divorced borrower withdraws from the operation or dies. The transfer of accounts secured by real estate or both real estate and chattels will be processed under Subpart A of Part 1965 of this chapter. The transferor (borrower) must be sent Form FmHA 1924–14, "Notice—Farmer Program Borrower Servicing Options Including Deferral and Borrower Responsibilities," as soon as the borrower contacts the County Supervisor inquiring about a transfer.

(a) * * *

(2) Generally the debts assumed will be paid in accordance with the rates and terms of the existing notes or assumption agreements. Any delinquency and any deferred interest outstanding will be scheduled for payment on or before the date the transfer is closed. Form FmHA 1965–13, "Assumption Agreement (Farmer Program Loans)," will be used. If the existing loan repayment period is extended, the debt being assumed may be rescheduled using Form FmHA 1965–13. The new repayment period may not exceed that for a new loan of the same type and the current interest rate for such loans will be charged. If any deferred interest is not paid by the time the transfer takes place, it must be added to the principal balance and the loan must be placed on new rates and terms.

* * * * *

(b) * * *

(3) FmHA debts assumed will be repaid in amortized installments not to exceed 5 years using Form FmHA 1965–13. Any deferred interest not paid by the time the transfer takes place must be added to the principle balance. The transferred property, including EO property, will be subject to any existing FmHA lien. In the absence of an existing FmHA lien, new lien instruments will be executed. Interest rates to the transferee will be as follows:

* * * * *

(f) * * *

(8) Form FmHA 1965–13.

* * * * *

(12) Form FmHA 1965–13 or Form FmHA 1965–22, "Information on Assumption on New Terms or Other Change of Terms," as appropriate, and Form FmHA 1965–23, "Supplemental Information on Assumption and/or Change of Terms."

* * * * *

(g) * * *

(1) On receipt of Form FmHA 1965–22, and Form FmHA 1965–23 the Finance Office will establish an account in the name of the assuming transferee and will notify the County Supervisor.

* * * * *

43. § 1962.40 is amended by revising paragraph (c) to read as follows:

§ 1962.40 Liquidation.

* * * * *

(c) *Multiple loans and loans secured by both real estate and chattels.* Follow the provisions of § 1965.26(c) of Part 1965 of this chapter for liquidating these loans.

* * * * *

44. Section 1962.46 is amended by revising paragraph (f) to read as follows:

§ 1962.46 Deceased borrower.

* * * * *

(f) *Liquidation of security.* When probate or administration proceedings have not been started and continuation with a survivor or transfer and assumption by another party will not be approved, chattel security and real estate security will be liquidated promptly in accordance with this subpart and Subpart A of Part 1965 of this chapter, respectively. If the proceeds from the sale of security are insufficient to pay in full the indebtedness owed to FmHA, and other assets are available in the estate or in the hands of heirs from which to collect, the State Director will request OGC to effect collection.

* * * * *

45. Section 1962.47 is amended by revising paragraph (c)(3) to read as follows:

§ 1962.47 Bankruptcy and insolvency.

* * * * *

(c) * * *

(3) In Chapter 11 of Chapter 13 cases, if liquidation is necessary it will be accomplished in accordance with either § 1962.26 of Subpart A of Part 1965 of this chapter of § 1962.40 of this subpart, as applicable. The advice of OGC will be obtained before any notices are sent to the borrower.

* * * * *

PART 1965—REAL PROPERTY

46. The authority citation for Part 1965 continues to read as follows:

Authority 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

47. Subpart A is added to reads as follows:

PART 1965—REAL PROPERTY

Subpart A—Servicing of Real Estate Security For Farmer Program Loans and Certain Note-Only Cases

Sec.

1965.1 Purpose.
1965.2 General policies.
1965.3 Borrower's responsibilities.
1965.4 FmHA's responsibility.
1965.5 Servicing certain insured Farm Ownership (FO) loans.
1965.6 Consent of lienholders.
1965.7 Definitions.
1965.8–1965.10 [Reserved]
1965.11 Preservation of security and protection of liens.
1965.12 Subordination of FmHA mortgage to permit refinancing, extension, increase in amount of existing prior lien, to permit a new prior lien, or to permit reamortization.
1965.13 Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.
1965.14 Subordination of FmHA real estate mortgages to easements to the U.S. Fish and Wildlife Service (formerly the Bureau of Sport Fisheries and Wildlife).
1965.15 Subordination of FmHA's lien to the Commodity Credit Corporation's (CCC) security interest taken for loans made for farm storage and drying equipment.
1965.16 Consent to junior liens.
1965.17 Lease of security.
1965.18 Transfer of upland cotton, peanut, or tobacco allotments.
1965.19 Severance agreement.
1965.20 [Reserved]
1965.21 Assignment and release of Soil Conservation or similar program payments.
1965.22 Deceased borrower.
1965.23 Bankruptcy and insolvency.
1965.24 Servicing note-only cases.
1965.25 Release of FmHA mortgage without monetary consideration on basis of additional security because of mutual mistake, non-existence of evidence of indebtedness, or valueless liens.
1965.26 Liquidation action.
1965.27 Transfer of real estate security.
1965.28–1965.30 [Reserved]
1965.31 Taking liens on real estate as additional security in servicing FmHA loans.
1965.32 [Reserved]
1965.33 Cosigners—SFH Loans.
1965.34 Non-Program (NP) Loans.
1965.35 Exception authority.
1965.36 State Supplements and reference to the OGC.
1965.37 Redelegation of Authority.
1965.38–1965.49 [Reserved]
1965.50 OMB control number.

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

§ 1965.1 Purpose.

This subpart delegates authority and prescribes policies and procedures for servicing real estate, leasehold interests and certain note-only cases for Farmers Home Administration (FmHA) Farmer Program loans and Non-Program loans (NP). Security servicing for borrowers who have *both* FmHA Farmer Program, NP and Single Family Housing (excluding Technical Assistance Grants and Site loans) (SFH) loans, will be according to this subpart. Security servicing for borrowers who are indebted for SFH loans *only*, will be according to Subpart C of Part 1965 of this chapter. This subpart does not apply to FmHA guaranteed loans, Rural Rental Housing (RRH) loans, Labor Housing (LH) loans, Business and Industrial (B&I) loans, Community Programs (CP) loans, Shift-in-Land-Use (Grazing Association) loans, Irrigation and Drainage (I&D) loans, or loans to Indian Tribes and tribal corporations.

§ 1965.2 General policies.

FmHA will service real estate security in a manner that best accomplishes the loan objectives and protects the Government's financial interest. To accomplish this, FmHA will service the real estate security in accordance with the security instruments and related agreements, including any authorized modifications and the provisions of this subpart.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

§ 1965.3 Borrower's responsibilities.

Each borrower is responsible for repaying principal and interest on a timely basis pursuant to the loan documents, paying real estate taxes in accordance with Part 1863 of this chapter (FmHA Instruction 425.1), providing adequate property insurance in accordance with Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1), maintaining, protecting, and accounting to the FmHA for all real estate security, and complying with other loan requirements.

§ 1965.4 FmHA's responsibility.

The County Supervisor, District Director or other servicing official is responsible for informing borrowers of their responsibilities in connection with the loan, seeing that the security is being properly maintained and accounted for, and servicing the account and security in accordance with this subpart. When a borrower fails to maintain, protect, or account for the security, as required by the loan documents, or makes unauthorized disposition or use of any security, FmHA will institute prompt action to protect FmHA's interest. The County Supervisor, District Director or other servicing official will obtain any needed legal advice from the Office of the General Counsel (OGC) through the State Director. Once a case has been referred to the OGC for legal action, no further action will be taken by the County Supervisor, District Director or other servicing official without prior

clearance from OGC. If the case has been referred to the U.S. Attorney, clearance with the U.S. Attorney will be obtained through the OGC. All FmHA employees will document actions taken to service a loan in the running case record in the borrower's FmHA file(s). When a servicing action affects a borrower's account (e.g., a foreclosure action is pending), the appropriate FmHA servicing official will notify the Finance Office.

§ 1965.5 Servicing certain insured Farm Ownership (FO) loans.

(a) *Servicing actions.* When an insured FO mortgage running to the lender as mortgagee is not held by the FmHA under trust assignment, or declaration of trust, or in the insurance fund (called insured FO mortgage held by the lender in this subpart) and a written subordination or partial release or other servicing document is requested, the document will be executed by the holder on a form prepared or approved by OGC. In those cases, execution of the document will constitute consent.

(b) *Execution of documents.* The County Supervisor is authorized to execute on behalf of the Government, all necessary forms, satisfactions, releases, and other documents required to complete any transactions in this subpart after the transaction has been approved by the appropriate approving official. The documents will be executed on behalf of the United States in the following form:

(1) "United States of America," when the mortgage names the United States as mortgagee, or when a mortgage running to the lender is not under a trust or declaration of trust and the note is held by the insurance fund.

(2) "United States of America, for Itself and as Trustee," when an FO mortgage is held by the FmHA under a trust assignment or declaration of trust, regardless of whether the note is held by a lender or by the insurance fund.

§ 1965.6 Consent of lienholders.

When this subpart requires the consent of other lienholders, consent will be obtained and furnished in writing to the FmHA by the borrower before the FmHA enters into a transaction which affects its security or its lien. This consent will, unless otherwise provided in a State Supplement, include an agreement as to the disposition of any funds involved in the transaction.

§ 1965.7 Definitions.

(a) *County Supervisor* also includes Assistant County Supervisor who has written delegated authority to carry out purposes of this subpart.

(b) *District Director* also includes Assistant District Director who has written delegated authority to carry out purposes of this subpart.

(c) *FmHA loans, FmHA accounts, FmHA interests, FmHA security, FmHA debts* and similar terms apply to indebtedness owed to, or insured by, the United States of America acting through the FmHA, and to related security instruments.

(d) *Farmer Program Loan* includes only Farm Ownership (FO), Operating (OL), Soil and Water (SW), Economic Emergency (EE), Emergency (EM), Recreation (RL), Economic Opportunity (EO), and Special Livestock (SL) loans, and/or Rural Housing Loans for farm service buildings (RHF).

(e) *Foreclosure sale.* The act of selling security either under the "Power of Sale" in the security instrument or through court proceedings.

(f) *Leasehold.* A right to use farm property for a specific period of time under conditions provided for a lease agreement.

(g) *Mortgage.* Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term "mortgage" also refers to any security interest in chattel property.

(h) *Non-Program (NP) Loan.* An NP loan results when credits are extended to ineligible applicants and/or transferees in connection with loan assumptions and sale of inventory properties.

(i) *Note* includes any note, bond, assumption agreement or other evidence of indebtedness.

(j) *Security.* Property of any kind subject to a real or personal property lien including, among other things, appurtenant rights of development, leasehold, grazing or other use privileges.

(k) *Servicing action* includes, among other things, the cash sale or transfer of real estate and chattel property and the assumption of loans.

§§ 1965.8—1965.10 [Reserved]

§ 1965.11 Preservation of security and protection of liens.

(a) *Inspection of security.* The County Supervisor will inspect farm real estate security a minimum of one time every 3 years for accounts that are current. More frequent inspections will be made when a borrower is delinquent or otherwise in default or when problems exist involving the security. If all or part of the security is located in another County Office area, the County Supervisor for that area may be requested to inspect the property. Security on non-farm tracts will be inspected when:

(1) Liquidation action is likely to be taken;

(2) The property has been abandoned;

(3) Necessary to protect the interest of the Government; or

(4) Requested by the borrower.

(b) *Action by FmHA for account of borrower.* When necessary to protect the interest of the Government, action will be taken by FmHA for the account of the borrower as provided below. Any advances made for the following purposes will be considered protective advances and will be paid by Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," or other approved voucher in accordance with FmHA Instruction 2075–A (available in any FmHA office), and forwarded to the Finance Office for issuance of the Treasury Check and charged to the borrower's account.

(1) *Abandoned and Custodial Property.* Determinations of abandonment will be made according to § 1955.55 of Subpart B of Part 1955 of this chapter. Services for the management, care, and maintenance of custodial property will be obtained according to § 1955.55 of Subpart B of Part 1955 of this chapter. Custodial property may be leased according to the provisions of § 1955.66(a)(1) of Subpart B of Part 1955 of this chapter.

(2) *Maintenance.* Complete information concerning the borrower's failure to adequately maintain the security will be documented in the case file. If there is a prior lien, expenditures for maintenance will not be made unless the prior lienholder refuses to make them. Evidence of this unwillingness to do so should be included in the case file.

(3) *Taxes and assessments.* Real estate taxes and assessments will be handled in accordance with Part 1863 of this chapter (FmHA Instruction 425.1).

(4) *Insurance.* For FmHA loans secured by liens on real estate, property insurance will be obtained and serviced in accordance with requirements for the kind of loan involved, and in accordance with Subpart A of part 1806 of this chapter (FmHA Instruction 426.1), and when appropriate, Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2).

(c) *Actions by third parties which affect security*—(1) *General provisions.* When third parties bring suit or take any other action which could affect property servicing as security, borrowers are expected to protect their own interests in the property. A few examples of

actions by third parties are: condemnation proceedings, foreclosure, trespass suits, and actions to quiet title.

(i) *County Supervisor's responsibility.* When the County Supervisor learns of a third party action which could jeopardize the Government's interest in the security or when the County Supervisor or the Government is made a party to a court proceeding, the County Supervisor will immediately send the borrower Form FmHA 1924–14, "Notice—Farmer Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities." Then the County Supervisor will send the County Office case file, complete with information concerning the action, and recommendation for FmHA servicing action to the State Director. The information sent to the State Director will include a copy of any petition or complaint, as soon as available; current account balances; a current appraisal report; the name and address of the borrower's attorney, if any; and any other information which the County Supervisor believes important such as unpaid taxes, judgments, or other liens.

(ii) *State Director's responsibility.* The State Director will consult OGC about all lawsuits involving the property. The State Director will also consult OGC about any other third party actions when OGC's advice would be helpful. The State Director will then advise the County Supervisor of the actions to be taken to protect the Government's interest in the property. Protective advances will only be authorized to protect the Government's interest. Protective advances will not be authorized for protection of the borrower's interest or the interest of any third party. When foreclosure or any other action which would cause the borrower to lose possession of the property is imminent, the State Director may consider making a subsequent loan or approving a subordination to permit another lender to make a loan, provided:

(A) A subsequent loan or subordination is necessary to enable the borrower to retain the property.

(B) The borrower has the ability and resources necessary to overcome the problems that caused the foreclosure or other action, and

(C) The third party agrees to postpone further action pending the processing of a subsequent loan or subordination.

(iii) *Other actions.* The State Director may also approve a transfer and assumption under this subpart provided the action will adequately protect the Government's interest and the third party agrees to delay further action pending processing of the transfer and assumption. The State Director will notify the County Supervisor of the actions to be taken to protect the Government's interest.

(2) *Sale by a prior lien foreclosure.* When FmHA learns that a prior lienholder is contemplating foreclosure, the prior lienholder will be contacted to determine the amount of the prior lien indebtedness and the estimated cost of a foreclosure sale. An insured note which is not held by the insurance fund will, whenever possible, be assigned to the insurance fund before a foreclosure sale. Otherwise, the assignment will be completed as soon as feasible after the foreclosure sale.

(i) *Decision to pay off the prior lien.* When, under State law, it is necessary prior to foreclosure to acquire the prior lienholder's rights to protect the Government's junior lien interest, title evidence will be obtained. Information clearly supporting the need to acquire the prior lienholder's rights must be documented and made a part of the file. Payment of the prior lien and required costs may be made with the advice of OGC, provided:

(A) The Government will obtain a greater recovery of the secured debt (not an inventory profit) than it could by bidding at the foreclosure sale, and

(B) The FmHA account after acquisition of the prior lien *must* be handled in accordance with § 1965.26(b) of this subpart. No exceptions will be made to this provision (B).

(C) Loans may be reamortized without regard to loan limits to include protective advances when authorized on an individual case basis by the National Office. When continuation with reamortization to include protective advances is recommended, the case file with documentation of all facts of the situation necessitating protective advances, efforts made to obtain a new participating lender, and justification for reamortizing will be submitted to the National Office.

(ii) *Decision not to pay off the prior lien.* If FmHA decides not to pay off the prior lien, the County Supervisor will immediately complete Exhibit B (available in any FmHA office) to this subpart and send it to the borrower, along with Form FmHA 1924–14, a *blank* form FmHA 1924–25, "Notice of Intent to Take Adverse Action," and a *blank* Form FmHA 1924–26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action." Then one of the following actions will be taken.

(A) *Making a bid.* Bidding will be completed in accordance with § 1995.15(f) (5) and (6) of Subpart A of Part 1955 of this chapter. Information clearly supporting the bid as being to the Government's financial advantage must be documented and made a part of the file. When FmHA enters a bid reporting actions will be taken in accordance with §§ 1955.15(g) and 1955.18 of Subpart A of Part 1955 of this chapter.

(B) *Making no bid.* When the State Director determines that no bid will be entered by FmHA, the County Supervisor will, at the discretion of the State Director, attend the sale and make a narrative report to the State Director outlining the results of the foreclosure sale and plans for future servicing of the account. If the Government is to rely on its redemption rights, that fact will be indicated in the report.

(iii) *Acquisition of property by exercise of Government redemption rights.* If the Government for any reason did not protect its interest at the time of the foreclosure sale and if the Government has any redemption rights, the State Director will determine whether to redeem the property in accordance with § 1955.13 of Subpart A of Part 1955 of this chapter.

(3) *Foreclosure sale subject to FmHA mortgage.* When FmHA learns that a junior lienholder is foreclosing, the County Supervisor will send the borrower Form FmHA 1924–14. If the borrower contacts FmHA and wants to apply for servicing relief, the request will be processed in accordance with the appropriate FmHA regulation. If the junior lien is foreclosed and the property is sold subject to the FmHA mortgage, the borrower will be sent Forms FmHA 1924–14, 1924–25 and 1924–26. The Form FmHA 1924–25 will list all conditions constituting default, such as delinquency and failure to operate the farm, as reasons for accelerating the account. Acceleration of the account and demand for payment will be accomplished according to the applicable portion of § 1955.15 of Part 1955 of this chapter.

(d) *Divorce actions.* See § 1965.27 (b)(5)(iii) of this subpart for directions on servicing security after divorce. A subsequent loan made as a result of a divorce action will be handled in accordance with § 1965.27(b)(13) of this subpart.

§ 1965.12 Subordination of FmHA mortgage to permit refinancing, extension, increase in amount of existing prior lien, to permit a new prior lien, or to permit reamortization.

See § 1965.34(e) of this subpart for requirements concerning subordinations of non-program (NP) loans.

(a) *Conditions for subordination.* A subordination may be granted subject to the following conditions:

(1) The FmHA debt cannot be refinanced on terms which the borrower can reasonably be expected to meet;

(2) The transaction will further the objectives for which the FmHA loan or loans were made;

(3) The terms and conditions of the prior lien will be such that the borrower can reasonably be expected to meet them, as well as all other debts;

(4) An assignment of the beneficial interest in any stock required in connection with a loan will be obtained as security, when possible and when needed;

(5) The FmHA indebtedness after the subordination will be adequately secured or will not be adversely affected by the transaction;

(6) The proposed use of the funds including the payment of reasonable costs and expenses incident to the transaction will improve the borrower's ability to repay the FmHA loan(s) or is necessasry to place the borrower's operation on a sound basis;

(7) The use of the funds obtained as a result of the subordination will not conflict with loan purposes, restrictions or requirements of the type of loan(s) being subordinated, and

(8) The amount of any prior lien plus the balance of the FmHA debt will not exceed the market value of the security. When the FmHA indebtedness was not fully secured by the market value of the security before the transaction, a subordination may be granted only if the market value of the total security will be increased through improvement or acquisition by an amount at least equal to the additional advance. For Section 502 SFH loans subject to recapture, FmHA indebtedness will be determined in accordance with Subpart I of Part 1951 of this chapter.

(b) *Purpose of subordination.* A subordination may be granted for any of the following purposes:

(1) *Refinance, extend, or reamortize debts of other lenders.* Refinance, extend, or reamortize an existing prior lien provided the amount of the indebtedness secured by the prior lien, as of the date of the transaction, is not increased by more than reasonable costs incidental to loan closing plus funds for the purchase of any required stock.

(2) *Increase the amount of a prior lien or permit a new prior lien when another lender's funds will not be used to reduce the FmHA debt.* The requirements of § 1965.12(a) of this subpart must also be met.

(i) *Nonfarm tract.* When a nonfarm tract secures an SFH loan, the other lender's funds will only be used for the same purposes and with the same limitations that would be applicable if an SFH loan were made.

(ii) *Farm tract.* (A) When a farm tract secures an FO loan only or an FO and any other type FmHA loan, the other lender's funds may be used for any purpose for which an FO loan can be made, regardless of the requirement of § 1965.12(a)(7) of this subpart.

(B) When a farm tract secures other type(s) of FmHA loan(s) currently authorized, the other lender's funds may be used for any purposes for which that type loan is authorized.

(C) When a farm tract secures any FmHA loan and it is determined essential for the borrower to remain in farming, the State Director may approve a subordination for operating credit when no other alternative exists. The reasons and justification supporting the subordination for operating expenses will be fully documented in the case file by the County Supervisor prior to submission to the State Director.

(D) When additional land is to be acquired by use of proceeds from the subordination, Form FmHA 440–2, "County Committee Certification or Recommendation," will be completed before the subordination is approved. A subordination for purchase of additional land will not be approved without favorable recommendation of the County Committee.

(iii) Any proposed development will be planned and performed in accordance with Subpart A of Part 1924 of this chapter or in a manner directed by the creditor which reasonably attains the objectives of Subpart A of Part 1924 of this chapter and is agreed to by FmHA.

(iv) Funds used to develop or to acquire land will be handled as prescribed in Subpart A of Part 1902 of this chapter. If the creditor will not permit the use of a supervised bank account, arrangements satisfactory to the FmHA which will assure that the funds will be spent for the planned purposes may be substituted.

(v) In cases of land purchase or exchange of property, the FmHA will obtain a valid mortgage on the acquired land. Title clearance and loan closing will be required as for an initial or subsequent FO loan, as appropriate. The mortgage will be recorded when the subordination is delivered to the other lenders or immediately after the other lender records its mortgage.

(3) *Increase the amount of a prior lien or permit a new prior lien, when the other lender's funds will be used wholly or in part to reduce the FmHA debt.* Funds of another lender may be used to pay on an FO, SL, SW, RHF, RL, OL, EO, EE, or EM loan. Funds of another lender may also be used to pay the amount delinquent on a SFH loan provided the SFH borrower also owes an FO loan. FmHA may subordinate its lien to that of the other lender, even though the primary purpose of the new loan funds is to reduce the existing FmHA loan. A written justification for allowing the subordination must be prepared and made a part of the borrower's case file. The approval official will decide whether or not to allow the subordination based on the following factors, which should be addressed in the written justification:

(i) The new loan funds must be needed to accomplish the objectives in § 1965.2 of this subpart;

(ii) The new loan funds must be needed to establish the borrower's operation on a sound basis;

(iii) The conditions in paragraph (a) of this section must be met; and

(iv) The restrictions in paragraph (b)(2) of this section apply to any part of the other lender's funds not applied on the FmHA indebtedness.

(c) *Request for subordination.* When a borrower requests the FmHA to subordinate a mortgage, Form FmHA 465–1, "Application for Partial Release, Subordination, or Consent," will be prepared. If an agreement to give notice of foreclosure is required for approval of an initial FmHA loan, an agreement with a new prior lienholder will be obtained as required in § 1807.2(f)(5) of Part 1807 of this chapter (FmHA instruction 427.1, paragraph II F 5). In case of an insured mortgage held by the lender, the holder's consent will be obtained in accordance with § 1965.5 of this subpart. Any other lienholder's consent to the transaction and use of the proceeds will be obtained as provided in § 1965.6 of this subpart.

(d) *Appraisal.* A current appraisal report will be prepared in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 442.1) when property is to be purchased or exchanged, or when the existing appraisal report is more than 1 year old or is inadequate to make the determination required in this paragraph. When an appraisal is required by FmHA in connection with a subordination being granted to the Federal Land Bank (FLB), the appraiser may recommend, or the loan approval official may find, the market value of the total security to be equal to the market value of the real estate plus the value of the FLB stock. This determination will be recorded on a separate sheet and attached to the appraisal report. When a subordination is granted in connection with any FmHA loan to permit a loan by

another lender, the FmHA appraiser is authorized to use the appraisal report prepared for the other lender in determining the recommended market value of the property in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 442.1, Exhibit A available in any FmHA office).

(3) *Approval authority*—(i) *Nonfarm tracts.* County Supervisors and District Directors are authorized to approve subordinations under this section which do not exceed their respective loan approval authorities, as outlined in Exhibit C of FmHA Instruction 1901-A (available in any FmHA Office). State Directors are authorized to approve any subordination which exceeds the approval authority for County Supervisors or District Directors.

(ii) *Farm tracts.* County Supervisors and District Directors may approve subordinations for purposes authorized in this subpart when the FmHA indebtedness plus the subordination does not exceed their approval authority for the type of loan or a combination of types of loans as outlined in Exhibit C of FmHA Instruction 1901–A. When more than one type of loan is involved in the subordination, the loan approval authority of County Supervisors and District Directors will be the highest combination amount authorized in Exhibit C of FmHA Instruction 1901–A for any of the loan types involved, except for subordination of real estate security for operating credit, for which the authority is reserved to the State Director. State Directors are authorized to approve any subordination, consistent with this subpart, which exceeds the approval authority of County Supervisors and District Directors.

(f) *Processing.* When the approval of the subordination by the State Director is required or when the County Supervisor or District Director desires advice before approval of the subordination, the borrower's case folder with current documents to support the applicable determinations, such as, where appropriate, Forms FmHA 431–2, "Farm and Home Plan" (or other plan of operation acceptable to FmHA), FmHA 431–1, "Long-Time Farm and Home Plan," FmHA 431–3, "Household Financial Statement and Budget," FmHA 422–1, "Appraisal Report (Farm Tract)," FmHA 1922–8, "Residential Appraisal Report," FmHA 440–2, other necessary forms, and Form FmHA 465–1 will be sent to the State Office. As required by § 1965.12(b)(2)(ii)(D), Form FmHA 440–2 will be completed when a subordination is granted for the purchase of additional land. After approval of the subordination, it will be closed in accordance with State Supplements to the maximum extent possible as provided in § 1965.36 of this subpart. However, when legal advice on an individual case is necessary, Form FmHA 465–1, any subordination form furnished in connection therewith, the original or a copy of the FmHA mortgage, the refinancing mortgage or agreement, and related documents will be submitted to the OGC for review and preparation of the necessary instruments and closing instructions. The documents and closing instructions will be sent to the County Office. If the signature of the State Director is required on some of the instruments, the docket and closing instructions will be routed through the State Office. The subordination will be completed in accordance with the closing instructions.

(g) *Reamortizing existing FmHA debts other than SFH.* The County Supervisor, District Director, or State Director (as appropriate) may consent to a reamortization of an existing FmHA debt when a subordination is granted to the debt of another lender. The reamortization will be allowed only if the borrower cannot reasonably be expected to meet installments when due. Reamortizations of farmer program loans will be processed in accordance with Subpart A of Part 1951 of this chapter. Reamortization of SFH loans will be processed in accordance with Subpart G of Part 1951 of this chapter. Refer to § 1965.34(f) of this Subpart if an NP loan is involved.

§ 1965.13 Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.

If an NP loan is involved, see § 1965.34 of this subpart.

(a) *Provisions of FmHA mortgages.* In all FmHA mortgages except SFH loan mortgages prepared before October 1, 1950, and a few OL, EM, Special Livestock (SL), and Water Facilities (WF) loan mortgages, the borrower has agreed not to sell, transfer, assign, mortgage, or otherwise encumber the security or any portion of or interest in it without the prior written consent of the mortgagee. Furthermore, in the case of the few SFH, OL, EM, SL, and WF loan mortgages not requiring FmHA consent, any property, or any part of it or interest in it, which is subject to the FmHA mortgage and which is disposed of by the borrower without consent remains subject to the mortgage lien. In all FmHA mortgages the borrower expressly agrees not to engage, without prior consent, in certain specified transactions, including the cutting or removal of timber, or mining or removal of gravel, oil, gas, coal, or other minerals, except small amounts used by the borrower for ordinary domestic purposes. The sale of timber (other than harvests for thinning purposes approved by FmHA on a farm plan), mining products, removal of gravel, oil, gas, coal, or other minerals by unit or lump sum payments will be considered as disposition of a portion of the security, *except:* For Farmer Program loans approved after December 23, 1985, the sale of such products, other than timber, will be considered a disposition of a portion of the security *only* if the rights to the products were specifically included as a part of the appraisal value of the real estate securing the loan; if the rights were not included in the appraisal, then FmHA has no lien on the rights to oil, gas or other minerals located under the real estate. Any payment or other compensation the borrower may receive for damages to the surface of the collateral real estate resulting from exploration for or recovery of minerals will be assigned to FmHA and will be used to repair the damage or used as authorized in § 1965.13(f) of this subpart. This section explains how and under what circumstances FmHA will grant partial releases, and give its consent to certain transactions affecting the security. Subordinations, transfers, consents to junior liens, leases and severance agreements are discussed individually in other sections of this subpart. Releases granted in connection with a final payment on real estate will be handled in accordance with Part 1866 of this chapter (FmHA Instruction 451.4).

(b) *Conditions of FmHA consent.* A State Supplement will be developed, with guidance of OGC, and issued to provide guidance for handling of easements or rights-of-way in connection with the development, extension, construction or modification of community based programs, such as rural water districts, drainage, and irrigation districts, without requiring monetary consideration or detailed appraisals. Otherwise, FmHA may consent to certain transactions affecting the security (for example, a sale or an exchange of security or granting a right-of-way across security) and/or grant a partial release if:

(1) The transaction will further the objectives for which the FmHA loan or loans were made;

(2) The proposed use of the funds including the payment of reasonable costs and expenses incident to the

transaction will improve the borrower's ability to repay the FmHA loan(s) or is necessary to place the borrower's operation on a sound basis;

(3) The consideration is adequate for the security being disposed of or the rights granted (see paragraph (c) of this section);

(4) Orderly repayment of the FmHA indebtedness will not be impaired (does not apply in condemnation cases after final judgment or award which is not appealed);

(5) The transaction will not interfere with successful operation of any farming or other enterprise providing the borrower with repayment ability (does not apply in condemntation cases after final judgment or award which is not appealed);

(6) The market value of the remaining security is adequate to secure the unpaid balance of the FmHA debts, or if the market value of the security before the transaction was inadequate to fully secure the FmHA debts, the FmHA's security interest is not adversely affected;

(7) The requirements of § 1965.6 of this subpart are met; and

(8) The borrower cannot graduate to other credit.

(c) *Exchange of property.* When an exchange of property serving as security for an FmHA loan results in a balance owing to the FmHA borrower, the provisions of this section applicable to a sale of a portion of the security will apply as to disposition of proceeds. When property is exchanged, the property acquired by the FmHA borrower must meet requirements of the program objectives, purposes and limitations outlined in this subpart relating to the type of loan involved as well as respective requirements for appraisal, title clearance and security. Requests for exchange of property which cannot be approved under this section may be submitted to the National Office for consideration, provided the request meets conditions in § 1965.35 of this subpart.

(d) *Appraisals.* When the official authorized to approve the transaction is uncertain whether the proposed consideration is adequate, or for any other reason considers an appraisal necessary to complete Form FmHA 465–1, or when the transaction involves more than $10,000, a new appraisal report will be obtained in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1). However, a new appraisal report need not be obtained if there is an appraisal report not over 1 year old in the case file which will permit the official authorized to approve the transaction to make the proper determination of the market value of the property being retained and the market value of the portion to be released. When a new appraisal is not required, the appraiser will indicate the estimate of values and the basis for it in the comments section of the existing appraisal report. The notation will be initialed and dated. When a new appraisal report is required, it will be completed to show the present market value of the property being retained. The rights to mining products, gravel, oil, gas, coal or other minerals will be specifically included as a part of the appraised value of the real estate securing the loans. Also, the present market value of the property being released will be shown under the comments section of the same appraisal report. Information regarding sales of comparable properties used in arriving at the present market value of the property being released will be shown in the comments section or on an attached sheet.

(1) *Stationary units.* If timber or minerals, including sand, gravel, and stone which appear to be worth more than $2,000 are to be sold on the basis of the timber stand or the mineral deposit rather than the units to be removed, the borrower will be encouraged to obtain the assistance of a qualified technician other than an FmHA employee to provide advice on the quality or value of the timber or minerals, and the manner in which they should be sold. Generally, assistance can be obtained from State or Federal employees who are located in the area, such as U.S. Department of Agriculture Forest Service employees.

(2) *Units removed.* When timber or minerals including sand, gravel, or stone, are to be sold on the basis of the units to be removed, or when an easement or a right-of-way is to be sold or granted, the employee authorized to make the appraisal may insert the date, and initial a notation on the existing appraisal report instead of making a new appraisal report. The notation should show (i) the unit value of timber or minerals, or the value of the easement or right-of-way, based on the consideration being paid for similar items in the area; and (ii) the manner in which the remaining property will be affected. If the market value of the remaining property is significantly decreased, a market value appraisal of the remaining property usually will be required.

(e) *Authority of the County Supervisor and District Director*—(1) *General.* County Supervisors and District Directors may approve transactions for purposes authorized in this subpart when the FmHA indebtedness after the transaction does not exceed their approval authority for the type of loan or a combination of types of loans as outlined in Exhibit C of FmHA Instruction 1901–A (available in any FmHA Office). When more than one type of loan is involved in the transaction, the loan approval authority of County Supervisors and District Directors will be the highest combination amount authorized in Exhibit C of FmHA Instruction 1901–A for any of the loan types involved. State Directors are authorized to approve any transaction, consistent with this subpart, which exceeds the approval authority of County Supervisors and District Directors.

(2) *Forest products.* County Supervisors and District Directors can approve most applications for consent or release involving the harvest or sale of forest products. In the case of 3 percent loans for forestry purposes, applications for consent or release will be forwarded to the State Director for approval if:

(i) The harvest or sale is not in accordance with strict provisions of the initially approval forestry plan,

(ii) Future repayments on the 3 percent advance are scheduled on any basis other than equal annual installments,

(iii) There is a lien on the forest land prior to the lien of the FmHA, or

(iv) There is a delinquency on any FmHA real estate loan.

(3) *Terms of a sale.* County Supervisors and District Directors may approve sales made on the following terms.

(i) Sale of a portion of the security for its market value on the following terms:

(A) For SFH loans, refer to § 1965.110 of Subpart C of Part 1965 of this chapter.

(B) For all other loans, not less than 10 percent (of the purchase price) down and payments not to exceed ten annual installments of principal plus interest at not less than the current rate being charged on regular FO loans plus 1 percent or the rate on the borrower's note(s), whichever is greater. Payments may be in equal or unequal installments with a balloon final installment. For farmer program loans approved after December 23, 1985, the sale of mining products gravel, oil, gas, coal, or other minerals will be considered a sale of security *only* if the rights to such products were specifically included as a part of the appraised value of the real estate securing the loan; if the rights were not included in the appraisal, then FmHA has no lien on the rights to such products located under the real estate.

(ii) In each case it must be determined that: (A) The government's security rights, including the right to foreclose on either the portion being sold or retained, are not impaired,

(B) The down payment and any subsequent payments are applied to the FmHA debt(s), prior lien(s), or otherwise used as authorized in this section under paragraph (f) of this section, and

(C) If applicable, the requirements of Subpart G of Part 1940 of this chapter must be met.

(iii) In each case the following conditions must be met: (A) Any amount to be paid FmHA from the down payment and subsequent payments must be assigned to FmHA,

(B) The property sold will not be released prior to either full payment of the borrower's account or receipt of full amount of sale proceeds with proper application or release of the proceeds, and

(C) The borrower must agree in writing that the sale proceeds will not affect the borrower's primary and continued obligation for making payments under terms of the note or any other agreements approved by FmHA.

(f) *Use of proceeds.* County Supervisors or District Directors may approve transactions if the proceeds will be used in one of the following ways.

(1) Proceeds may be applied on liens in order of priority. Written consent of any prior or junior lienholder will be obtained by the borrower and delivered to the FmHA if any proceeds are not to be applied in accordance with lien priorities.

(2) The borrower may use a portion of any proceeds to pay customary incidental costs appropriate to the transaction and reasonable in amount which the borrower cannot arrange to pay from personal funds or cannot have the purchaser pay. The costs may, for example, include real estate taxes which must be paid to consummate the transaction; costs of title examination, surveys, abstracts, title insurance, reasonable attorney's fees; reasonable attorney's fees and court costs in condemnation cases; costs necessary to determine the reasonableness of an offer or asking price, such as fees for appraisal of minerals, land, or timber when the necessary appraisal cannot be obtained without costs; real estate broker's commissions; judgment liens and additional income tax which the borrower is required to pay for the year because of the capital gain or other payments from the transaction. The amount of the estimated tax on the particular transaction will be deposited in an interest bearing or supervised bank account, and any deposited funds not needed to pay the borrower's adjusted tax liability for the year of the transaction will be applied in a manner set out in this paragraph (f). In any State in which it is necessary to obtain the insured note from the lender to present to the recorder before a release of a portion of the land from the mortgage, the borrower must pay any costs for postage and insurance of the note while in transit. The County Supervisor will advise the borrower when requesting a partial release that the borrower must pay the costs. If the borrower is unable to pay the costs from personal funds, they may be deducted from the sale proceeds. The amount of the charge will be based on the statement of actual costs furnished by the payee.

(3) Proceeds may be used for development of land owned by the borrower or for enlargement, if development or enlargement is necessary to improve the borrower's debt-payment ability and to place the borrower's operation on a sound basis, or to otherwise further the objectives of the loan. The use of proceeds for these purposes will not conflict with the loan purposes, restrictions or requirements of the type loan(s) involved. Any proposed development work will be in accordance with Subpart A of Part 1924 of this chapter. Funds to be used for development or enlargement will be handled under Subpart A of Part 1902 of this chapter.

(4) When FmHA loans secured by a lien on real estate will be adequately secured after a transaction affecting the real estate takes place, proceeds may, with the consent of the State Director and other lienholders on the real estate, be used as follows:

(i) Applied to delinquent or unmatured FmHA loan installments when the borrower is otherwise unable to meet the installments.

(ii) For other than SFH loans, applied on debts owed creditors other than FmHA to the extent needed to establish a basis for continuation of the other creditor's account.

(iii) Develop land not owned by the borrower which is essential to the borrower's operation in an amount not to exceed $10,000, provided: the improvements are needed to improve the borrower's repayment ability and the borrower has tenure arrangements which justify the use of the proceeds on the land not owned by the borrower. Development work performed will be in accordance with Subpart A of Part 1924 of this chapter. Funds will be handled under Subpart A of Part 1902 of this chapter.

(5) When liquidation action is pending in accordance with § 1965.26 of this subpart, the County Supervisor or District Director is authorized to approve transactions only when all the proceeds (other than costs authorized in paragraph (f)(2) of this section) will be applied to the liens against the security in the order of their priority.

(g) *Authority of the State Director.* The State Director is authorized to approve transactions that exceed the approval authority granted in paragraph (e) of this section to the County Supervisor and District Director, or that involve an easement or right-of-way granted or conveyed without monetary compensation or for a token consideration. When approving these transactions, the State Director must determine that the requirements of paragraph (b) of this section are met.

(h) *Processing.* FmHA's consent will be given by approving a completed Form FmHA 465–1 if the transaction meets the conditions of paragraph (b) of this section. Also, when requested, FmHA will give a written partial release on Form FmHA 460–1, "Partial Release," or other form approved by OGC. A formal release may not be delivered for 15 days after the payment is received unless payment is made in the form of cash, money order, certified check, or check from a reputable lending agency. Releases not delivered will usually be voided 30 days after notification to the requesting party that the release is available. When an insured FO mortgage is held by the lender, the holder's consent will be obtained only if a written partial release or other written servicing document is requested by the borrower. When the approval of a transaction by the State Director is required, or when the County Supervisor or District Director desires advice in connection with approval of a transaction, the borrower's case folder, Form FmHA 465–1, and any other information pertinent to the transaction will be sent to the State Office.

(i) *Liquidation.* If FmHA is unable to approve a partial sale, the partial sale cannot be used as the basis for liquidation in the following circumstances:

(1) The spouse or children of the borrower become the owner of the property.

(2) The sale results from a divorce or legal separation and the spouse of the borrower becomes the owner of the property.

(3) An intervivos trust becomes the owner of the property so long as the borrower is a beneficiary of the trust

and there is no change in occupancy of the property.

§ 1965.14 Subordination of FmHA real estate mortgages to easements to the U.S. Fish and Wildlife Service, (formerly the Bureau of Sport Fisheries and Wildlife.)

Exhibit A (available in any FmHA office) of this subpart, "Memorandum of Understanding between Bureau of Sport Fisheries and Wildlife (now the U.S. Fish and Wildlife Service) and the Farmers Home Administration," outlines the procedure to follow in processing a subordination of an FmHA mortgage on wetlands on which the Bureau of Sport Fisheries and Wildlife requests an easement for waterfowl habitats. The County Supervisor will handle the request in accordance with the steps outlined in Exhibit A and applicable processing portions of § 1965.12 of this subpart.

§ 1965.15 Subordination of FmHA's lien to the Commodity Credit Corporation's (CCC) security interest taken for loans made for farm storage and drying equipment.

The CCC makes loans under its Farm Storage and Drying Equipment Loan Program for the purchase, construction, erection, remodeling, or installment of either farm storage or drying equipment or both and requires that any loan at the discretion of the approving committee, be secured by a lien on the real estate. When the CCC proposes to make a loan to an FmHA borrower and requests a subordination of the FmHA real estate lien, the request will be handled on an individual case basis under § 1965.12 of this subpart. A borrower's request for the FmHA's consent to a severance agreement or other similar instrument for an item or items to be acquired with a CCC loan will be handled under § 1965.19 of this subpart.

§ 1965.16 Consent to junior liens.

As a general policy, FmHA borrowers will be discouraged from giving other creditors junior liens on real estate securing an FmHA loan. (For Sections 502 and 504 loans, see § 1965.111 of Subpart C of Part 1965 of this chapter).

(a) *Processing request.* When consent to a junior lien is requested by a borrower, the County Supervisor may consent by executing Form FmHA 465–1 or other form approved by OGC for use in the state provided:

(1) The terms of the junior lien debt are such that repayment is not likely to jeopardize payment of the FmHA loan;

(2) Operating plans made with the junior lienholder are consistent with plans made with FmHA;

(3) Total debt against the security will not exceed its market value; and

(4) The junior lienholder agrees in writing not to foreclose the mortgage before a discussion with the County Supervisor and after giving a reasonable specified period of written notice to FmHA.

(b) *Consent not requested or granted.* When a junior lien is placed on any property without FmHA consent and consent cannot be granted under this section, FmHA may continue with the loan as long as the borrower pays FmHA loans as agreed, maintains the security, and meets all other conditions of the loan. The existence of a junior lien cannot be treated as a default. The County Supervisor will continue to service the loan to protect the Government's security interest.

§ 1965.17 Lease of security.

(a) *General provisions.* When the County Supervisor learns that a borrower is leasing or intends to lease all or a portion of the security, the County Supervisor will ask the borrower for a copy of the lease, if it is written. If the borrower leases or proposes to lease the real estate security for a term of more than 3 years or with an option to purchase, the County Supervisor will normally initiate liquidation action in accordance with § 1965.26(b) of this subpart. However, if under unusual circumstances the County Supervisor believes FmHA should consent to such a lease arrangement, prior approval of the Assistant Administrator, Farmer Programs, or the Administrator, if a SFH loan is secured by the same security, is required. The State Director should forward such a request, along with a justification, to the National Office.

(b) *Liquidation.* No action to initiate liquidation based on the lease will be taken unless the borrower:

(1) Enters into a lease for a term of more than 3 years; or

(2) Enters into a lease for any term containing an option to purchase.

(c) *NP loan.* If an NP loan is involved, § 1965.34 of this subpart applies.

(d) *Mineral leases.* When a borrower requests consent to lease the mineral rights to security, the County Supervisor may consent provided the proposed use of the leased rights will not result in the Government's security interest being adversely affected. If applicable, the requirements of Subpart G of Part 1940 of this chapter must be met. A borrower does not need FmHA's consent to lease the mineral rights securing a Farmer Program loan approved after December 23, 1985, unless the oil, gas or other minerals were included on FmHA's real estate appraisal. If FmHA consent is needed and consent is given, lease payments can be used for prospective payments on FmHA loans. Any payment or other compensation the borrower may receive for damages to the surface of the collateral real estate resulting from exploration for or recovery of minerals will be assigned to FmHA and will be used to repair the damage or used as authorized in § 1965.13(f) of this Subpart. Form FmHA 465–1 will be used to process requests under this section. The County Supervisor should carefully document the facts to support the determinations reached concerning the effects of a mineral lease on the Government security. Assignment of income will be taken by use of Form FmHA 443–16, "Assignment of Income from Real Estate Security," or other form approved by OGC which is necessary to comply with State law.

§ 1965.18 Transfer of upland cotton, peanut, or tobacco allotments.

(a) *General.* Agriculture Stabilization and Conservation Service (ASCS) regulations, pursuant to approved legislation, permit the transfer of upland cotton, peanut, or tobacco allotments by one or more of the following transactions: (1) Sale, (2) lease, or (3) transfer by the owner to another farm owned or controlled by the owner. These regulations require, among other things, that no allotment be transferred from a farm which is subject to a mortgage or other lien, unless the transfer is agreed to by the lienholders. It is FmHA's policy to approve the transfer of any crop allotments permitted by the ASCS regulations if the conditions and requirements of this subpart can be met. FmHA personnel should familiarize themselves with the States ASCS policies and requirements concerning the sale, lease, or transfer of allotments to assure compliance with established FmHA policies and servicing of security.

(b) *Authorization.* County Supervisors are authorized to approve a transfer of upland cotton, peanut, or tobacco allotment by execution of a completed Form FmHA 465–1. County Supervisors are also authorized to execute the lienholder or mortgagee agreement on appropriate ASCS forms provided by ASCS for those cases in which a transfer is approved.

(c) *Transfer by sale.* Crop allotments enhance the value of a farm mortgaged to the FmHA and constitute security for the FmHA loan. Accordingly, when a borrower whose farm is mortgaged to the FmHA inquires about the sale of any of the allotted acres or requests the FmHA to sign the required lienholder or mortgagee agreement, the request will be treated the same as for a sale of a

portion of the security and approval of the sale can be granted only in accordance with the applicable conditions and requirements of § 1965.13 of this subpart. The sale proceeds may be used as authorized in § 1965.13(f) of this subpart.

(d) *Transfer of allotment by lease.* The County Supervisor has the authority to approve a lease of all or a portion of an allotment for a 1 year period, provided the lease or its terms will not adversely affect the repayment of the loan; leasing is not an alternative to or means of delaying liquidation; and the lease and use of proceeds will further the objectives of the loan. If a 1 year lease is approved, the lease proceeds may be used as farm income as outlined in § 1962.17(b) of Subpart A of Part 1962 of this chapter. Leases for a period of more than 1 year will be granted only with the concurrence of the District Director. When a lease is for more than 1 year, an assignment of the rental proceeds should be obtained.

(e) *Transfer of allotment by owner to other land owned or controlled by the owner.* A transfer by an owner to other land owned or controlled by the owner is normally interpreted by the ASCS as a permanent transfer and can be avoided only by stipulating in the mortgage approval that the transfer is to be considered as a lease for the appropriate number of years. This type of transfer will be approved only as a lease under conditions in paragraph (d) of this section to assure that the crop allotment on the security is not adversely affected.

§ 1965.19 Severance agreement.

Form FmHA 440–26, "Consent and Subordination Agreement," will be completed when a borrower requests FmHA's consent to a severance agreement, or other instrument of similar effect, so that items to be acquired by the borrower through other credit and subject to a chattel lien will not become a part of the real estate securing the FmHA debt. Some examples of items which may be acquired subject to a chattel lien are silos, storage bins, bulk milk tanks, irrigation or income producing facilities, non-farm enterprise facilities, and recreational equipment. County Supervisors are authorized to give FmHA consent by executing Form FmHA 440–26 and any necessary severance agreements, provided that the following determinations are made:

(a) The financing arrangements are in the best interest of the Government and the borrower.

(b) The transaction will not adversely affect FmHA's security position and will be within the borrower's debt-paying ability, and

(c) The facility does not exceed the borrower's needs, is modest in cost and design; and is otherwise in line with FmHA financing policies. OGC will be requested to approve any severance agreement submitted by a borrower that is of a type not previously approved for use in the State and, when necessary, to issue closing instructions. The State Director may request the OGC to prepare a severance agreement instrument for use in the State.

§ 1965.20 [Reserved]

§ 1965.21 Assignment and release of Soil Conservation or similar program payments.

The County Supervisor may take an assignment on income to be received under USDA Programs or similar contracts to protect the financial interest of the Government or to facilitate loan servicing. The assignments of all or a portion of the income from the assignment may be released to the borrower by the County Supervisor when not to the financial detriment of the Government, and when payments due on all FmHA loans have been made from other income or the assigned income is needed for family living and farm operating expenses. This income will *not* be shown on Form FmHA 1962–1, "Agreement for the Use of Proceeds/Release of Chattel Security." The receipt of these proceeds and their planned use will be clearly identified on the current farm pan.

§ 1965.22 Deceased borrower.

Deceased borrower cases will be handled under § 1962.46 of Subpart A of Part 1962 of this chapter.

§ 1965.23 Bankruptcy and insolvency.

Bankruptcy and insolvency cases will be handled under § 1962.47 of Subpart A of Part 1962 of this chapter. For SFH loans, refer to Subpart C of Part 1965 of this chapter.

§ 1965.24 Servicing note-only cases.

Each loan made on a note-only basis without real estate security will be serviced in a manner consistent with the best interests of the FmHA.

(a) *Sale of real property on which improvements were made with note-only FmHA funds.* Any loan evidenced only by an unsecured note will be collected by voluntary means at the time of the sale of the property, is possible. If collection is not possible, the loan may be assumed by the purchaser of the property on the terms of the note if the assumption is determined to be in the FmHA's best financial interest. If collection or assumption cannot be effected, consideration should be given to settling the account in accordance with Part 1864 of this chapter (FmHA Instruction 456.1) if it is eligible, obtaining judgment, or classifying it as collection-only. In case of a judgment sale, the State Director with the advice of OGC and the U.S. Attorney, will authorize an employee to attend the sale and if appropriate, enter a bid on behalf of the Government under Subpart A of Part 1955 of this chapter.

(b) *Assumption of note-only when real property securing another FmHA loan is involved.* When a borrower has an FmHA loan secured by real estate and another FmHA loan evidenced only by a note and the real estate is to be transferred and the entire secured real estate debt is to be assumed, all or a part of the unsecured note up to the present market value of the property in excess of existing liens must also be assumed.

§ 1965.25 Release of FmHA mortgage without monetary consideration on basis of additional security because of mutual mistake, non-existence of evidence of indebtedness, or valueless liens.

(a) *Additional real estate, chattel, or miscellaneous security.* Real estate, chattels, or miscellaneous items which were taken as additional security for a loan secured by real estate may be released by the State Director without consideration before the loan is paid in full, if the market value of the remaining security for the loan is clearly adequate to secure the unpaid balance of the loan. For any loans made for operating purposes, a real estate lien may be released only if the real estate was considered "additional" security when the loan was made. For the purposes of this paragraph, real estate securing any loan made for real estate purposes is not considered "additional security." Additional security for an SFH non-farm loan is real estate in addition to the tract on which the dwelling is located. Before a release can be granted, there must be reasonable assurance that orderly payments can be made on the FmHA indebtedness, and;

(1) The release is needed in order for FmHA or other creditors to finance the borrower's operations; or

(2) The purpose for which the loan was made would be facilitated; or

(3) The borrower's ability to repay the loan will be improved.

(b) *Release of real estate from mortgage because of mutual mistake.* Land or buildings included in the mortgage through mutual mistake, when substantiated by the facts of the situation, may be released from the

mortgage by the State Director. The release is contingent on a determination of the State Director, with the advice of the OGC, that a mutual error existed at the time such property was included in the Government's mortgage.

(c) *No evidence of indebtedness.* The FmHA mortgage may be released by the County Supervisor in situations where there is no evidence of an existing indebtedness secured by the mortgage in the records of the FmHA County, State, and Finance Offices.

(d) *Release of valueless liens.* State Directors are authorized to release FmHA mortgages or other liens which have no present or prospective value or when their enforcement would likely be ineffectual or uneconomical. This authority does not extend to valueless judgment liens or valueless statutory redemption rights except with the consent of the OGC. The following information will be obtained in determining present or prospective value:

(1) *Appraisal report.* A market value appraisal report on the security prepared by an FmHA employee authorized to appraise under Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1).

(2) *Lienholders.* The names of the holders of prior liens on the property, the amount secured by each lien which is prior to the FmHA, the amount of taxes or assessments, and other items which might constitute a prior claim. This information will be recorded in the running case record of the borrower's County Office case folder and submitted to the State Director for review.

§ 1965.26 Liquidation action.

(a) *Voluntary liquidation*—(1) *General.* When a borrower contacts FmHA and asks about voluntarily liquidating security, the borrower will be told that liquidation can be accomplished by:

(i) Selling the security under paragraph (f) of this section.

(ii) Transferring the security under § 1965.27 of this subpart.

(iii) Conveying all security to FmHA as outlined in Subpart A of Part 1955 of this chapter.

(iv) Refinancing the FmHA debt with another lender.

The County Supervisor will explain the provisions of these regulations to the borrower.

(2) *Sale or Transfer for less than secured debt.* If the property is to be sold or transferred for less than the total secured debts against it, the property will be appraised immediately to determine its present market value. The appraisal will be completed by an authorized FmHA employee in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1) and placed in the borrower's case file.

(b) *Involuntary liquidation.* When the County Supervisor, with the advice of the District Director, determines that continued servicing of the loan will not accomplish the objectives of the loan, or that for other reasons further servicing cannot be justified under the policy stated in § 1965.2 of this subpart, liquidation of the account(s) will be accomplished as expeditiously as possible. In former program cases, borrowers must receive Forms FmHA 1924–14, FmHA 1924–25, and FmHA 1924–26, and *any appeal must be concluded before any adverse actions can be taken.* The County Supervisor will send these forms to the borrower as soon as a decision is made to liquidate.

(1) *General.* After the borrower is notified that FmHA wants the account liquidated and if the borrower is willing to voluntarily liquidate the account immediately by one of the methods indicated in paragraph (a)(1) of this section, the borrower is allowed 120 days to accomplish such action after the borrower has indicated the action to be taken on Form FmHA 1924–26 and has returned the form to the County Supervisor. If the property is to be sold or transferred for less than the total secured debts against it, the property will be appraised immediately to determine the present market value. The appraisal will be completed by an authorized FmHA employee in accordance with subpart A of 1809 of this chapter (FmHA Instruction 422.1) and placed in the borrower's case file.

(2) *Problem case report.* If the borrower is unwilling to voluntarily liquidate or fails to carry out a voluntary liquidation within the time set out in paragraph (b)(1) of this section, the County Supervisor will complete Form FmHA 1955–2, "Report on Real Estate Problem Case," and submit it according to § 1955.15 of Subpart A of Part 1955 of this chapter.

(3) *Acceleration of account.* When foreclosure is approved, acceleration of the account and demand for payment will be accomplished according to the applicable paragraphs of section 1955.15 of Subpart A of Part 1955 of this chapter.

(4) *Voluntary liquidation after acceleration.* Granting time for voluntary liquidation after acceleration is not authorized for farmer program loans.

(c) *Multiple loans and loans secured by both real estate and chattels.* (1) When a borrower is indebted to the FmHA for more than one type of FmHA loan, a thorough study should be made of each loan and the effect liquidation of one or more of the loans would have on any and all other loans. When liquidation of one or more FmHA loans secured by real estate is necessary and it will jeopardize the repayment of or the accomplishment of the purpose of other loans, liquidation of all real estate and all chattel security for all loans will be started at the same time. Chattel security will be liquidated under Subpart A of Part 1962 of this chapter, except that when an account(s) secured by chattels only or by both chattel and real estate will be transferred, such transfer(s) will be accomplished in accordance with § 1965.27 of this subpart. When a farmer program loan borrower also has another FmHA loan secured by property which also serves as security for the farmer program loan, the non-farmer program loan will be accelerated at the same time the borrower is sent Form FmHA 1924–25.

(2) SFH loans on non-farm tracts should not be routinely liquidated just because the borrower could not be successful in the farming operation. When a borrower is indebted for both farmer program loans and an SFH loan for a dwelling on a non-farm tract, consideration may be given to continuing with the SFH loan when the farmer program loans are liquidated, provided the borrower:

(i) Has acted in good faith;

(ii) Has satisfactorily accounted for all security;

(iii) Has paid in accordance with ability;

(iv) Voluntarily liquidates all security for the loans other than the SFH non-farm security;

(v) Has repayment ability and agrees to continue to pay on the SFH loan;

(vi) Continues to comply with conditions of the SFH loan; and

(vii) Will further agree to compromise or adjust the FP debt on the following terms;

(A) When the market value of the dwelling is greater than the amount of the SFH debt, the borrower will pay an amount equal to the difference between balance owed on the SFH loan and market value of the retained property at the time and any additional amount the borrower is able to pay; or

(B) When the market value of the dwelling is less than the amount of the SFH debt, the borrower will pay any amount the borrower is able to pay.

(d) *Operation of the security.* A borrower with farmer program loan(s) who without FmHA consent does not operate the farm or recreational facility is violating agreements with FmHA.

After complying with the requirements of § 1965.26(b) of this section pertaining to notice and appeals, such a borrower's accounts will be accelerated in accordance with § 1955.15(d)(2) of Subpart A of Part 1955 of this chapter, based on the failure to operate.

(e) *Accelerated repayment agreement.* When liquidation of an account is necessary because of failure to graduate to other credit the State Director may, in lieu of foreclosure, permit the borrower to pay the account under an accelerated repayment agreement. The State Director will determine that:

(1) Authorization for repayment of the debt under an accelerated repayment agreement is necessary to protect the Government's financial interest,

(2) The borrower can reasonably be expected to meet the accelerated payments, and

(3) The borrower will continue to comply with other requirements of the loans and security instruments.

(4) When an understanding is reached with the borrower, Form FmHA 1965–11, "Accelerated Repayment Agreement," will be prepared and executed in accordance with the Forms Manual Insert (FMI) for each note accelerated. Accounts rescheduled under Form FmHA 1965–11 will be reclassified as NP loans. The balance of the debt will be scheduled for repayment in annual or monthly amortized installments. If the borrower has monthly income, monthly payments will be scheduled. If annual payments are scheduled, the first installment may be less than an equal amortized installment if it is due less than a full year after the date the agreement is executed and the borrower will not be able to pay the first full amortized installment. If the borrower fails to meet any installment when due as provided in the agreement, foreclosure action will be initiated. Rates and terms authorized are:

(i) *Other than SFH loans.* (A) For real estate purpose loans secured by real estate when the remaining repayment period exceeds 10 years, the term generally will not exceed 10 years. In justified cases, the term may be up to 15 years. In no case may the term exceed the final due date of the note. An amortization factor for 20 to 25 years may be used, with a balloon installment due on the final due date. The interest rate will be that in effect for regular FO loans on the date the agreement is executed plus 1 percent or the interest rate of the note, whichever is greater.

(B) For loans for operating purposes secured by real estate when the remaining repayment period exceeds 2 years, the term may not exceed 5 years and in no case may the term exceed the final due date of the note. The interest rate will be that in effect for regular OL loans on the date the agreement is executed plus 1 percent or the interest rate of the note, whichever is greater.

(C) For loans for either real estate or operating purposes when the remaining repayment period is less than 10 years or 2 years, respectively, the State Director may authorize a shorter term. For loans made for a combination of loan purposes, the State Director may authorize an accelerated repayment term of up to 10 years, not to exceed the final due date of the note. The interest rate will be as specified in (A) or (B) of this paragraph.

(ii) *Single-family housing (SFH) loans.* For SFH loans, the term may not exceed ten years and the interest rate will be the SFH-Ineligible rate in effect on the date the agreement is executed.

(f) *Cash sales.* Before any cash sale, farmer program borrowers must be sent Form FmHA 1924–14. When a cash sale of mortgaged real estate will not result in the secured debts being paid in full, the County Supervisor is authorized to approve the sale for an amount not less than the present market value of the property and to release the borrower(s) from liability and release the Government's liens, provided:

(1) A substantial recovery can be made on the FmHA secured indebtedness based on the recent appraisal report required by paragraph (a)(2) of this section.

(2) All the proceeds are applied on the mortgage debts in accordance with their respective priorities except authorized costs as specified in § 1965.13(f)(2) of this subpart.

(3) Any applicable requirements of Subpart G of Part 1940 of this chapter must be met.

(4) The FmHA liens are not released by the County Supervisor until the appropriate sale proceeds for application on the Government's claim are received. The release will be made on forms approved or prepared by OGC.

(5) When the debt is not paid in full and a deficiency judgment is not to be obtained, a release of liability of the borrower can be processed.

(i) The County Committee has recommended release of liability with the following comment on the County Committee Certification:

In our opinion [*Name of Borrower(s) and any co-signer*] does not have reasonable ability to pay all or a substantial part of the balance of the debt owed after the cash sale, taking into consideration his or her assets and income at the time of the conveyance. The borrower has cooperated in good faith, used due diligence to maintain property against loss, and has otherwise fulfilled the convenants incident to the loan to the best of his or her ability. Therefore, we recommend that the borrower and any cosigner be released from personal liability for any balance due on the secured indebtedness upon completion of the transaction.

(ii) When the borrower's remaining outstanding FmHA debt after a cash sale exceeds $25,000, the Administrator must approve the release of liability. The case will be sent through the State Office to the National Office.

(6) If a release from liability cannot be granted, the case will be settled under the provisions of Part 1864 of this chapter (FmHA Instruction 456.1).

§ 1965.27 Transfer of real estate security.

When the mortgage requires the consent of the FmHA to any proposed sale or other transfer of real estate security, the borrower should be reminded that before firm agreements have been reached with a purchaser of all or a portion of the security, the borrower and purchaser should contact the County Supervisor concerning the proposed sale. Farmer program loan borrowers must be sent Form FmHA 1924–14 within 3 working days after the borrower contacts the County Supervisor inquiring about a transfer. If a proposed sale would not result in the FmHA accounts being paid in full at the time of sale, the County Supervisor should explain thoroughly the requirements of this section and §§ 1965.13 or 1965.26 of this subpart, as appropriate. When the transferor is receiving a substantial down payment from the sale of the property, the purchaser must be required to contact other sources of credit in an effort to secure a loan for repayment of the FmHA loan(s) in full. If an NP loan is involved, § 1965.34 of this subpart also applies. When real estate security, including water, access, development or other rights, is to be sold and the mortgage requires FmHA consent to the sale and the transaction cannot be approved under the appropriate sections of this subpart, the account will be liquidated as required in § 1965.26 of this subpart, or will be handled in accordance with § 1965.27(g) of this subpart.

(a) *Authority.* County Supervisors, District Directors, and State Directors are authorized to approve initial and subsequent transfers of real estate security to eligible or ineligible transferees, to approve assumptions in accordance with the respective loan approval authorities in Exhibit C of FmHA Instruction 1901–A (available in any FmHA office) and to release borrowers and co-signers from liability

when applicable, in accordance with paragraph (f) of this section. When a transfer is not within the County Supervisor or District Director's approval authority, the docket and the transferor's case file will be sent to the District Director or State Director, as appropriate, for approval or disapproval. State Directors may approve transfers to eligible transferees not to exceed the maximum statutory loan limits for the total FmHA indebtedness for the loan types involved including the loan(s) being transferred. State Directors may approve transfers to ineligible transferees regardless of the amount of the transfer without the FmHA National Office approval.

(b) *General policies.* The following general policies will be applicable when an FmHA borrower transfers, or proposes to transfer, real estate which is security for an FmHA loan(s). The loan account(s) will be assumed by use of Form FmHA 1965–13, "Assumption Agreement for Farmer Program Loans," or Form FmHA 1965–15, "Assumption Agreement (Single Family) Housing Loans," for SFH loans.

(1) *Agreement.* Form FmHA 465–5, "Transfer of Real Estate Security," will be completed to reflect the agreement between the transferor and the transferees. This agreement will not be completed for farmer program loan borrowers until the borrower has received Form FmHA 1924–14.

(2) *Assignment.* If an insured loan is involved, the Finance Office will have the note assigned to the insurance fund when the assumption agreement changes the terms of the note.

(3) *Amount assumed.* All transfers will be based on present market value. When the total secured FmHA debt(s) exceeds the present market value, the transferee will assume an amount of the principal and interest equal to the present market value as determined under § 1965.26(a)(2) of this subpart, less prior liens and any authorized costs. Otherwise, the transferee will assume the total FmHA secured debt(s). The unpaid principal balance and accrued interest will be shown in Table I of Form FmHA 1965–13 and the accrued interest will be computed from Form FmHA 451–26, "Transaction Record," or obtained from the monthly payment account Status Report. The transferee will be informed of the amount of the principal and interest owed, the total amount paid as of the closing date which has not been credited to the account, the amount that would be required to be paid to place the account on schedule as of the previous installment due date, the amount of interest, if any, that accrued during a deferral period, and any accounts that must be paid to bring any monthly payments up to date. Whenever reasonably possible, any delinquency should be paid at the time of assumption. However, this is not required if the total FmHA debt to be assumed is within the debt paying ability of the transferee. If the transferor received a loan deferral under § 1951.44 of Subpart A of Part 1951 of this chapter, the interest that accrued during the deferral period must be paid by the time the transfer takes place, or such interest will be added to the loan principal and the loan must be assumed on ineligible terms.

(4) *Payment of costs.* The payment of customary incidental costs appropriate to transfer of real estate will be the responsibility of the transferor and transferee. Costs may, for example, include real estate taxes, title examination, title insurance, abstracts, surveys, reasonable attorney's fees, real estate brokers fees and junior liens. State Directors may, in individual cases, approve the payment of transferor's costs by the transferee which are reasonable in amount and which the transferor cannot pay from personal funds provided:

(i) Cash equity due the transferor (if any) is applied first to payment of costs and the transferor will not be receiving any cash payment above costs.

(ii) Payment of any junior liens by the transferee does not exceed $5,000.

(iii) Real estate commission does not exceed the customary rate for the type of property for the area.

(iv) The transferee's personal funds equal to the transferee's costs and transferor's equity (if any) will be held in escrow by an FmHA designated closing agent for disbursal at closing of the transfer.

(v) The transferee will assume the entire FmHA debt less costs and less equity, if any.

(vi) The payment of the costs by the transferee is advantageous to the government. The probability of foreclosure, voluntary conveyance, maintenance and disposal of the security will be considered in making the determination.

(5) *Assumption on same terms.* In the following situations only, the debt will be assumed on the same terms as in the original note. The interest rate, final due date, account status (current, delinquent, ahead of schedule) and repayment schedule will not be changed at the time of the assumption. The interest rate and repayment schedule may be changed after the assumption, in accordance with FmHA loan servicing regulations. Except as noted below, Forms FmHA 450–10, "Advice of Borrower's Change of Address or Name," FmHA 465–5, and FmHA 1965–13 must be prepared and distributed in accordance with the FMI in each of the following situations.

(i) EM actual loss loans may be assumed on the same terms by those who were actually involved in the operation at time of the loss and meet one of the following requirements:

(A) If an individual received the actual loss loan, the transferee must be either an individual who is an immediate family member of the borrower or an entity which is made up of only immediate family members of the borrower. Such a transferee can assume the entire amount of the actual loss loan on the same terms.

(B) If a partnership received the actual loss loan, the transferee must be either a partner who was a partner in the partnership at the time the actual loss loan was made or an entity which is made up of only those who were partners in the partnership at the time the actual loss loan was made. Such transferees can assume the entire amount of the actual loss loan on the same terms.

(C) If a corporation/cooperative received the actual loss loan, the transferee must be either a stockholder/member who was a stockholder/member of the corporation/cooperative at the time the actual loss loan was made or an entity which is made up of only stockholders/members who were stockholders/members of the corporation/cooperative at the time the actual loss loan was made. Such transferees can assume on the same terms only that portion of the actual loss loan equal to the transferee's percentage of ownership in the corporation/cooperative (or, in the case of an entity transferee, the combined percentages of the individual stockholders/members).

(ii) A deceased borrower's spouse, other relative or joint tenant who did not sign the note but who acquires title to the property will be allowed to assume the loan on the same terms. Form FmHA 465–5 will not be completed.

(iii) When one of the joint individual borrowers withdraws from the operation and conveys his or her interest in the security to the remaining borrower who will repay the total indebtedness, an assumption agreement is not required. Partners in a partnership, stockholders in a corporation, or members of a cooperative who signed the note are not joint borrowers, but only co-signers; therefore, this paragraph does not apply to them. The previous joint owner will be released from liability for the indebtedness by completing Parts 1 and

3 of Form FmHA 1965–8, "Release from Personal Liability," provided:

(A) A divorce decree or property settlement document did not make the withdrawing party responsible for loan payments;

(B) The value of the security property is at least equal to the debt;

(C) The withdrawing party's interest in the security property is conveyed to the person with whom the loan will be continued; and

(D) The person with whom the loan will be continued has adequate repayment ability.

(iv) A family member of a borrower who wants to assume a debt with the existing borrower(s) may do so on the same terms. After the transfer, the assuming family member may own the property jointly with the existing borrower(s) or subject to a life estate of the existing borrower.

(v) If there is only one stockholder/member/partner of a corporation/cooperative/partnership who is personally liable on the note and that stockholder/member/partner withdraws from the operation or dies, all of the remaining stockholders/members/partners will be required to assume personal liability on the loan or else the transfer will not be approved. A Form FmHA 465–5 does not have to be processed unless title to the real estate is transferred.

(vi) If a stockholder/member/partner or a corporation/cooperative/partnership buys out the shares of the other stockholders/members/partners and continues to operate the farm, and if the remaining stockholder/member/partner is not personally liable on the note, that stockholder/member/partner will be required to assume personal liability on the loan or else the transfer will not be approved. A Form FmHA 465–5 does not have to be processed unless title to the real estate is transferred.

(vii) New stockholders/members/partners entering the corporation/cooperative/partnership will be required to assume personal liability on the loan or else the transfer will not be approved. A Form FmHA 465–5 does not have to be processed unless title to the real estate is transferred.

(6) *Loan type.* The type(s) of loan will remain the same for all loans except that loans which are transferred to ineligible applicants will be classified as NP.

(7) *Transfer of a portion of the security.* Generally, title to all FmHA real estate security, including any water, access, development or other rights, must be conveyed to the transferee not later than the date of closing of the transfer. However, a transfer of a portion of the FmHA real estate security with an assumption of the *total* indebtedness may be approved, provided:

(i) The portion of the FmHA security transferred has a present market value at least equal to the total indebtedness owed by the borrower or such indebtedness is reduced by a cash payment to the present market value of the property;

(ii) The transaction is advantageous to the Government; and

(iii) In cases of SFH loans, the portion of the property improved with SFH funds is conveyed to the person assuming the SFH loan.

(iv) The security retained by the transferor will be released from the Government's lien. The transferor will be released from liability if the conditions of paragraph (f) of this section are met.

(8) *Partial transfer and assumption.* When a request is made by a borrower to transfer a portion of the real estate security the transferee must assume an amount which meet the requirements of paragraph (b)(3) of this section. The considerations for approval will be as set forth in § 1965.13(b) of this subpart. Whole notes must be assumed; notes cannot be split. The portion of the security transferred will be released from the transferor's mortgage by partial release. When the assumption is by an eligible transferee, or by an ineligible transferee on terms of 5 years or less, the transferor may be released of liability on the loans assumed. The transferor will not be released of liability when the transferee is ineligible and terms exceed 5 years. Before approving a partial transfer and assumption it must be determined that the transaction is necessary for the borrower to establish a debt structure compatible with repayment ability, management ability or other limiting factor such as health, labor or markets available.

(9) *Multiple sales and assumptions.* When a request is made by a borrower to transfer the real estate security as parcels to two or more transferees with each assuming a portion of the debt, the County Supervisor may send the proposed action to the State Director for consideration if the County Supervisor recommends that the transaction would be advantageous to the Government. The total debt owed on all outstanding notes must be assumed by the transferees even though a portion of the security may be retained by the transferor. The County Supervisor will submit to the State Director the complete factual information concerning the transaction, including appraisal reports showing the present market value of each portion to be transferred; value of the total unit before subdivision; the amount of indebtedness to be assumed by each transferee; and the cases file with other pertinent information outlining the reasons for the proposed actions. If approved by the State Director, new security instruments will be required for each transferee at closing and any security retained by the transferor will be released from the Government lien. This policy is to permit transfer to two or more transferees when the transferor owes more than one note evidencing indebtedness or the indebtedness on one note is to be divided between transferees. OGC guidance will be requested in these case to ensure enforceable liens are obtained.

(10) *Dual security.* When the account(s) is secured by both chattels and real estate, all the chattel security must be transferred, sold or liquidated by the time of the transfer of real estate, except that in cases of EM, EE, or SL security, the real estate security may be transferred without transfer or liquidation of the chattel security upon prior approval of the National Office.

(11) *Consent of other lienholders.* Written consent to a proposed transfer and assumption must be obtained if required by any other lienholder(s).

(12) *Junior liens.* When the full amount of the FmHA debt is assumed, there must be no liens, judgments, or other claims against the security which are junior to any FmHA liens being assumed unless the State Director determines that the liens, judgments, or claims will not adversely affect the Government's security interests and that the transferee's ability to pay the FmHA debt will not be impaired. When less than the full amount of the FmHA debt is being assumed, there must be no liens, judgments, or other claims against the security which are junior to any FmHA loans being assumed.

(13) *Loans.* A loan for which the transferee is eligible may be made in connection with a transfer, subject to the policies and procedures governing the type of loan being made. When the transfer is being made to an eligible FO applicant, FO loan funds may be used to pay for the equity in the property being transferred. When real estate security for an SFH loan is transferred to a person eligible under Subpart A of Part 1944 of this chapter for an SFH loan to purchase the real estate, SFH loan funds may be used to pay for the equity in the property being transferred other than income-producing land or buildings. In

lieu of a subsequent loan of the kind involved, the Government's lien may be subordinated to enable the transferor to take a first mortgage, or permit another lender to take a first mortgage, in return for furnishing the funds needed in connection with the transfer. In these cases, the subordination will be processed in accordance with the applicable provisions of § 1965.12 of this subpart. For other than SFH loans, the transferor may convey title to the property by warranty deed or by purchase contract or similar instrument which meets the conditions of § 1943.16 (a)(3) of Subpart A of Part 1943 of this chapter. Prior lienholder's agreements will be obtained in accordance with § 1807.2 (f)(5) of Part 1807 of this chapter (paragraph II F 5 of FmHA Instruction 427.1). When necessary to settle a divorce action, a subsequent loan may be made, or a subordination may be granted to permit the remaining borrower to obtain a loan in an amount not to exceed the equity in the property provided the purchase of land is an authorized loan purpose or the subordination is in accordance with § 1965.12 of this subpart. (Also see § 1965.11(d) of this subpart.)

(14) *Payments.* When a payment is made to the transferor in connection with the transfer and assumption, and the full amount of the FmHA secured debt is not being assumed and other FmHA debts owed by the transferor are not adequately secured, the State Director may, as a condition of approving the transfer, require that all or a part of any payment be applied on the debts.

(15) *Down payment.* An eligible transferee who is financially able, will be required to make a downpayment on the FmHA secured debts. When a downpayment is required it will be collected at closing.

(16) *Date.* The effective date of the assumption will be the date on which Form FmHA 1965–13 is signed.

(17) *Nondiscrimination assurance.* When the property transferred will continue to be used for the same or a similar purpose, and the assistance was subject to the Civil Rights Act of 1964 and Subpart E of Part 1901 of this chapter which prohibits discrimination on the basis of race, color, national origin, handicap, age, religion, marital status, or sex in programs or activities receiving Federal financial assistance, the transferees must agree to comply with requirements of the statute and the regulation. The transferee will be required to sign a Form 400–4, "Assurance Agreement."

(18) *Recapture of subsidy.* Recapture of SFH subsidy in connection with assumption will be as provided in Subpart I of Part 1951 of this chapter.

(19) *County Committee.* The County Committee, except for SFH loans, must find that the transferee will honestly endeavor to make payments in accordance with the assumption agreement, maintain the security, and carry out the other obligations in connection with the loan. (See paragraph (g)(6) of this section.)

(20) *Environmental requirements.* Applicable provisions of Subpart G of Part 1940 of this chapter must be met.

(c) *Assumption of loans by eligible transferees*—(1) *Eligibility.* A loan may be assumed on eligible terms by an applicant (including an entity applicant) who meets all of the eligibility and loan purpose requirements for the type of loan being assumed or whose situation after the transfer of the real estate will satisfy the eligibility and loan purpose requirements. Eligibility and loan purpose requirements can be found in the loan making regulations applicable to the type of loan being assumed. (See paragraph (b)(5) of this section for a list of situations in which the debt can be assumed on the same terms as in the existing note.) Eligible applicants can assume loans so long as their FmHA principal and interest indebtedness after the assumption does not exceed the maximum loan limits for the type(s) of loan(s) involved. Loans may also be assumed on eligible terms under the following conditions:

(i) *SFH assumptions.* An applicant who is eligible for SFH assistance under Subpart A of Part 1944 of this chapter may assume a low-or-moderate, or an above-moderate income SFH loan. An above-moderate loan assumed by a low-or-moderate applicant will be reclassified and serviced as a low-or-moderate loan. Where a property securing an SFH loan is located in an area which has been redesignated from rural to nonrural, the loan may be transferred without regard to the nonrural designation.

(ii) *NP loan.* An NP loan may be assumed by an applicant who is determined eligible for an FO loan if the property is a suitable farm tract, or an applicant eligible for an SFH loan if the property is a suitable dwelling on a farm or non-farm tract. When closing the assumption, the loan will be reclassified as "FO" or "SFH", as applicable. See § 1965.34 of this subpart.

(iii) *EE, SL and other type loans no longer being made.* EE, SL and other type loans no longer being made may be assumed in accordance with paragraph (d) of this section. The loan(s) will be serviced in accordance with Section 1965.34 of this subpart.

(iv) *EM actual loss loans.* See paragraph (b)(5)(i) of this section.

(v) *Other loan types currently being made*—(A) *Individual transferees.* If real estate security is transferred to an individual who meets all of the eligibility requirements and loan purpose requirements for the type of loan being assumed, the loan may be assumed on eligible terms. This applies to transfers of real estate from individual borrowers and from entity borrowers, including entities in which the transferee had an interest.

(B) *Entity transferees.* If real estate security is transferred to an entity which meets all of the eligibility requirements and loan purposes requirements for the type of loan being assumed, the loan may be assumed on eligible terms.

(C) *EM non-actual loss loans (if currently being made).* These loans can be assumed on eligible terms. The loan making regulation requirement that an applicant must have suffered an actual loss in order to be eligible for a non-actual loss loan does *not* apply, for the purposes of this paragraph. If EM non-actual loss loans are not currently being made, refer to (c)(1)(iii) of this section.

(2) *Rates and terms.* Except as provided in paragraph (b)(5) of this section and in this paragraph, all loans will be assumed by eligible applicants at the current interest rate in effect for the loan type involved on the date the assumption agreement is signed. The approval official will approve the assumption by executing and delivering a copy of Form FmHA 1940–1, "Request for Obligation of Funds," to the assuming party. Form FmHA 1965–22, "Information on Assumption on New Terms or Other Change of Terms," and Form FmHA 1965–23, "Supplemental Information on Assumption and/or Change of Terms," will be prepared and distributed according to the respective FMI's. The repayment period will not exceed the repayment period for a new loan of the type involved; for example, FO—40 years, OL—7 years, EM—depends on loan purpose and SFH—33 years. An NP loan will be considered an FO or SFH loan as appropriate, if the applicant and the property meet the requirements of paragraph (c)(1) of this section. Above-moderate loans assumed by low-or moderate-income applicants will be assumed at the current low- or moderate-income SFH interest rate. (See Exhibit C to Subpart A of Part 1944 for income categories). See Subparts A of Parts 1941 and 1943 of this chapter for the definition of a limited resource applicant and an explanation of limited resource eligibility criteria; FO and OL loans may be assumed at the current

rate in effect for limited resource loans if the applicant is a limited resource applicant.

(d) *Assumption of loans by ineligible transferees.* When a borrower sells or proposes to sell the real estate security to a person(s) or entity not eligible to assume the debt under paragraph (b)(5) or (c) of this section and the mortgage requires the Government's consent for the transaction, it will be the policy to permit assumption of the account by an ineligible transferee if it is in the best interest of FmHA. Otherwise, the account will be liquidated as provided for in § 1965.26 of this subpart except as outlined in paragraph (e) or (h) of this section. Types of loans for which there are no existing authorization or eligibility requirements in FmHA regulations may be assumed under the requirements and conditions of this paragraph (see also paragraph (c)(1)(iii) of this section). Forms FmHA 1965–22 and FmHA 1965–23 will be prepared and distributed according to the respective FMI's. If the approval official determines that it is in the best financial interest of FmHA to have the account assumed, the approval official may consent to the initial or subsequent assumption agreement provided that:

(1) *Down payment.* Each assuming party is required to make as large a down payment on the FmHA secured debt as the party is financially able to make under the circumstances. However, no SFH loan may be assumed by an ineligible applicant without at least a 10 percent down payment of the purchase price. No farmer program loan may be assumed without at least a 5 percent down payment of the purchase price.

(2) *Terms—Other than SFH.* The balance of the FmHA debt assumed will generally be scheduled for repayment over a period not to exceed 15 years with amortized annual installments. Form FmHA 1940–17, "Promissory Note," and Form FmHA 440–9, "Supplementary Payment Agreement," if appropriate, will be used in accordance with the provisions of the FMI. Interest on farmer program loans will be at the current rate being charged for regular FO loans, plus 1 percent, or at the rate of interest specified in the note(s) being assumed, whichever is greater. If it is determined that the property cannot be transferred on terms of 15 years or less because of conditions in the area, the State Director may authorize a balloon installment or a longer repayment term not to exceed 25 years. In the case of real estate loan transfers originally made on repayment terms of not more than 15 years, an extension of the repayment period, not to exceed a total of 25 years from the date of the transfer, may be authorized when the borrower, because of crop failure, a natural disaster, or economic condition beyond the borrower's control, is unable to meet the scheduled installment(s). An extension may be granted only if the County Committee and the State Director determine that the extended repayment period is necessary to prevent foreclosure action and that the Government's interest will not be adversely affected. In these cases, the unpaid balance owned may be reamortized over the remainder of the 25 year period, and the borrower will execute a replacement assumption agreement evidencing the debt.

(3) *Terms—SFH loans.* For SHF loans, the balance of the SFH debt assumed will be scheduled for repayment in not more than 10 years with amortized annual or monthly installments. The interest rate charged on the amount assumed will be the current SFH ineligible rate.

(4) *Payment.* The transferee must have the ability to pay the FmHA debt in accordance with the assumption agreement and the legal capacity to enter into the contract.

(5) *NP loan.* An NP loan may be assumed by an applicant on ineligible rates and terms if it is in the best interest of FmHA.

(6) *County Committee.* The County Committee, except for SFH loans, must find that the transferee will honestly endeavor to make payments in accordance with the assumption agreement, maintain the security and carry out other obligations in connection with the loan. (See paragraph (g)(6) of this section.)

(7) *Condition.* The transfer must not adversely affect the FmHA program in the area.

(e) *Consent of FmHA not required to transfer.* When the FmHA mortgage(s) does not require the Government's consent to the sale of the security and the borrower conveys or proposes to convey the security to a person who is ineligible or unwilling to assume the FmHA debt in accordance with paragraphs (c) or (d) of this section, the Government will not consent to the sale. However, the sale cannot be used as a reason for liquidation. In such cases involving SFH loans, the County Supervisor will advise the State Director of the sale. If the account is delinquent or the loan is otherwise in default, the County Supervisor will also advise the State Director of the nature of the default and any specific plans that may have been made to correct the default. If the State Director decides to continue with the account, it will be serviced in the name of the original FmHA borrower, in the usual manner. In such cases involving farmer program loans, the borrower will be sent Form FmHA 1924–14.

(f) *Release of transferor from liability.* The borrower (and any cosigner for an SFH loan) may be released from personal liability when all of the real estate security is transferred under paragraph (c) or (d) of this section and the total outstanding debt or that portion of the debt equal to the present market value of the security is assumed. Borrowers, however, will not be released from personal liability to the FmHA when real estate securing loans is transferred to an ineligible transferee under paragraph (d) of this section unless the debt assumed by the transferee is scheduled for repayment in not to exceed 5 years from the date of the Assumption Agreement. When the transferor's remaining outstanding FmHA debt after a transfer and assumption exceeds $25,000, the Administrator must approve the release of liability. Therefore, the case will be sent through the FmHA State Office to the FmHA National Office. When the total outstanding debt is not assumed and a farmer program borrower is not being released from liability, the borrower must be sent a letter similar to Exhibit F of Subpart A of Part 1955 of this chapter (available in any FmHA office). When a portion of the real estate is transferred and the total SFH debt is assumed, a release may be granted under paragraph (b)(7)(iii) of this section. When only that portion of the debt equal to the market value of the security is assumed and the borrower is to be released from liability the following conditions must be met:

(1) *Required certification.* (i) Certification by County Committee. The County Committee must determine that the facts in each case support signing a memorandum containing the following statement:

(*Name of transferor and any cosigner*) in our opinion do not have reasonable ability to pay all or a substantial part of the balance of the debt not assumed after considering their assets and income at the time of transfer. Transferors have cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to the loan to the best of their ability. Therefore, we recommend that the transferor and any cosigner be released of personal liability upon the transferees' assumption of that portion of the indebtedness equal to the present market value of the security.

(ii) The official approving the transfer of SFH loans must also execute a memorandum containing the statement in paragraph (f)(1)(i) of this section.

(2) *Release.* For an SFH loan involving a cosigner, the transferor may be released from personal liability only if the cosigner also can be released (See § 1965.129 of Subpart C of this part).

(g) *Processing transfers and assumptions of indebtedness.* When the transfer is not within the County Supervisor's approval authority, the docket with the transferor's case file will be sent to the District Director or the State Office, as appropriate, for approval or disapproval.

(1) *Refund of unused funds, loan funds not advanced, transaction record.* Unexpended funds in the supervised bank account will be applied as a refund unless FO, SW, RL, or EM security is transferred to an eligible applicant and the funds are needed for completing planned development. Any obligations of or request for loan funds not yet advanced will be cancelled. Form FmHA 451–26, or the monthly payment account Status Report will be used to compute the unpaid balance due on the effective date of the transfer.

(2) *Preparation and distribution of transfer docket.* Loan docket processing and forms required will be the same as for an initial or subsequent loan of the type(s) involved.

(i) *Checking docket forms.* When the transfer docket forms, including those applicable forms, shown in Exhibit C (available in any FmHA office) of this subpart have been completed, the approval official will determine that the proposed transfer conforms to the applicable procedural requirements, each form is prepared correctly in accordance with the FMI or other appropriate instructions, and items such as names, addresses, and the amount of the indebtedness to be assumed are the same on all forms in which the items appear.

(ii) *Information on the availability of other credit.* An eligible transferee must meet the "no credit elsewhere" requirements for the type of loan being assumed. The County Supervisor will record in the running case record the pertinent information concerning the negotiations made by an eligible transferee and the discussion by FmHA personnel with the applicant's creditors and other lenders. The investigation and availability of other credit for eligible transferees will be documented as required for the kind of loan being assumed. This must be sufficiently clear and adequate to establish that other credit is not available to pay the debt in full, which would make the transfer unnecessary. Any letters from lenders or other evidence which may have been obtained indicating that the applicant is unable to obtain satisfactory credit elsewhere will be included in the loan docket.

(iii) *Transferor records.* The transferor's copies of notes, mortgages and other instruments in connection with the security are to be made available to the transferee.

(iv) *Distribution of transfer docket forms.* The necessary forms will be distributed in accordance with the appropriate loan processing regulation and the FMI for the form. See Exhibit C (available in any FmHA office) of this subpart which identifies the FmHA forms that will be used as appropriate.

(v) *Other transfer docket items when applicable.* Other transfer docket items may include a mortgage title policy, title evidence or report of lien search, foreclosure notice agreement, original or certified copy of deed to any property to be taken as additional security, purchase contract or other instrument of ownership, and information on prior mortgage(s) and cosigner(s). When the County Supervisor is the approval official, in lieu of including the document evidencing ownership, he or she may include a statement in the docket indicating that the document has been seen and reviewed. When less than the total amount of the indebtedness is assumed, the transferor's financial statement will be included. When an initial or subsequent loan is involved, include any additional forms required by the appropriate loan making regulation.

(3) *Collections and receipts.* During the period that a transfer is pending in the County Office, payments received by the Finance Office will continue to be applied to the transferor's account and Form FmHA 451–26 will be forwarded to the County Office. When the County Supervisor has received a payment on the account which is not included in the latest transaction record or monthly payment account Status Report, the amount will be deducted from the total amount of principal and interest only when received in the form of currency and coin, treasury check, cashier's check, certified check, postal or bank money order, or bank draft (this figure will be based on the latest information available) before completing the assumption agreement and having it signed. The following will also be done:

(i) *Transaction record.* When the borrower has made a direct payment to the Finance Office and there is no record of the payment in the County Office, the account will be assumed on the basis of the latest record in the County Office. In those cases, the application of the direct payment will be reversed from the account and the assumption agreement will be processed in the Finance Office. The Finance Office will contact the County Supervisor to determine the disposition of the proceeds from the direct payment.

(ii) *Identification of payments.* For payment received on the date of transfer, Form FmHA 451–2, "Schedule of Remittances," will be prepared to show "Transfer in process for account owed by (borrower's name and case number), to be transferred to (name of borrower and case number, if known)." If the borrower number portion of the case number has not yet been assigned for a transferee, only the State and County portion of the case number will be shown. A statement for the information of the Finance Office will be attached to the assumption agreement showing the date of Form FmHA 451–2 and the amount paid.

(iii) *Payment.* When a payment is due on the assumption agreement shortly after the transfer is completed, the payment should, if possible, be collected at the time of transfer and remitted in the name of the transferee.

(4) *Farm and Home plans and financial statements.* When the transfer involves an ineligible transferee, Forms FmHA 431–3 or FmHA 431–2 will be used with Tables A and J completed in the same manner as for any other borrower and other tables and portions of the form will be completed only to the extent necessary to determine the debt paying ability of the transferee and to give sufficient information for completing Table J. Another plan of operation acceptable to FmHA may be used in lieu of Form FmHA 431–2. When an assumption will be of less than the amount of the indebtedness and a release of liability is involved, a current financial and income statement of the transferor will be obtained on Forms FmHA 431–3 or FmHA 431–2 or other plan of operation acceptable to FmHA.

(5) *Appraisal report.* Forms FmHA 422–1 or FmHA 1922–8, as appropriate, will be obtained when the amount to be assumed is less than the full amount of the indebtedness, when required in connection with an initial or subsequent loan to be processed with the transfer, or when the loan approval official requests a current appraisal.

(6) *County Committee certification and recommendation.* The complete transfer docket, except SFH loans, will be presented to the County Committee for review.

(i) The transfer will be contingent upon the County Committee certification

on Form FmHA 440–2 for an eligible applicant or, when the transfer is to an ineligible applicant, executing a memorandum containing the following statement:

In our opinion, the transferee, (Name of transferee), will honestly endeavor to make payments in accordance with the assumption agreement, maintain the security, and carry out the other obligations in connection with the loan.

(ii) When the County Committee recommends a release of the transferor and any cosigner from liability when real estate security is being transferred under paragraph (c) or (d) of this section with an assumption of less than the total debt, the provisions of paragraph (f) of this section will be followed.

(iii) When the total outstanding debt is not assumed, a farmer program loan borrower who is not being released from liability must be sent a letter similar to Exhibit F of Subpart A of Part 1955 of this chapter.

(7) *Property insurance.* The transferee will obtain property insurance in accordance with the property insurance requirement for the loan(s) involved. If insurance is required, it may be obtained either by transfer of the existing coverage by the transferor or by acquisition of new coverage by the transferee. The insurance company will be notified by the County Supervisor immediately after completion of the transfer. When the full amount of the FmHA indebtedness is being assumed and an insurance premium has been advanced to the account, the transfer will not be completed until the amount of the premium has been charged to the transferor's account.

(8) *Title clearance and legal services.* Title clearance and legal services for closing transfers will be accomplished in accordance with Part 1807 of this chapter (FmHA Instruction 427.1). When the original repayment terms are altered, it may be necessary to obtain a new mortgage from the transferee to continue FmHA's lien on the transferred real estate. The advice of OGC will be obtained on a state-by-state basis and implemented through State Supplements to provide for new mortgages when required, and to further provide instructions on whether the original mortgage should be released. Title clearance and legal services for the above transfer(s) are not required when a joint borrower's interest in the security is conveyed to the remaining borrower who assumes the total indebtedness on the same terms, provided a subsequent loan or subordination is not involved. For all other kinds of transfers, title clearance and loan closing services will not be required unless the approval official, with the advice of OGC, determines that the services are needed to maintain FmHA's security position or for other reasons. If another mortgagee's mortgage requires the mortgagee's consent to the transfer, consent will be obtained.

(9) *Assumption agreements, releases from personal liability, receipts.* When the full amount of the debt is assumed or a release from personal liability is otherwise approved under this subpart and all of the security is being transferred. Forms FmHA 1965–13; 1965–22 (as applicable); 1965–23; 451–1, "Acknowledgment of Cash Payment;" and 1965–8, will be prepared and distributed according to the FMI.

(h) *Transfer of security without FmHA consent or approval.* When a borrower transfers or proposes to transfer real estate security to another party and FmHA is unable or unwilling to approve the transferee as either an eligible or ineligible applicant, the conveyance cannot be used as the basis for liquidation if the borrower's spouse or children become the owner of the property *or* if an intervivos trust becomes the owner of the property so long as the borrower is a trust beneficiary and there is no change in occupancy of the property. If the transfer is to someone other than a spouse, child or intervivos trust and the County Supervisor determines that it is not in the best interest of FmHA to liquidate to the loan(s) in accordance with § 1965.26 of this subpart, the following actions will be taken in order listed:

(1) The County Supervisor will advise the State Director of the transfer or proposed transfer of the security and reasons why FmHA cannot approve the transferee as eligible or ineligible. Complete details of the transfer conditions, terms and consideration will be submitted to the State Director with the borrower (transferor) file. Current information on status of the loan(s) owed FmHA and of any debts owed other lenders on the property will be included with a current appraisal of the FmHA security and security equity position. The appraisal will be completed in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1). Recommendations of the County Committee, County Supervisor, and District Director will be included on the following:)

(i) Reasons why continuation of the loan would be in the best interest of the Government.

(ii) The effect continuation of the account will have on the FmHA program in the area.

(iii) Comments and opinion on adequacy of security and ability of transferor to pay the FmHA debt.

(2) The State Director will review all information submitted and request additional information needed to reach a decision. This includes advice of OGC. After deciding, the State Director will either:

(i) Return the file to the County Supervisor with instructions to proceed with liquidation of the account in accordance with § 1965.26(b) of this subpart and state reasons for the decision; or

(ii) Return the file to the County Supervisor stating reasons for the decision and giving consent to continue the account as an NP loan with instructions for obtaining liability of the transferee, maintaining security position and future servicing. If FmHA is adequately secured and the entire FmHA debt will be paid in 5 years or less from date of the transfer, the borrower-transferor can be released of liability under paragraph (f) of this section and the account serviced in the name of the transferee. If the entire FmHA debt will not be paid within 5 years from date of the transfer, the borrower will not be released of liability, the account will continue to be serviced in the borrower's name and the borrower will remain liable for the debt under the terms of the security instruments. Advice of OGC will be obtained as needed to determine the borrower's continued liability and adequacy of security.

§§ 1965.28–1965.30 [Reserved]

§ 1965.31 Taking liens or real estate as additional security in servicing FmHA loans.

(a) *Liens.* When taking real estate as additional security, the best lien obtainable will be taken on any real estate owned by the borrower, including any real estate which already serves as security for another loan. Normally, the prior concurrence of the District Director will be obtained. Liens will be taken only when:

(1) Present security for the loan is not adequate to protect the interests of the FmHA, and

(2) The borrower has substantial equity in the real estate to be mortgaged and it is determined that the taking of the mortgage will not prevent the making of an FmHA real estate loan, which might be needed in the foreseeable future.

(b) *Real estate.* Before taking real estate as additional security for an FmHA loan the following items will be documented in the running record:

(1) the facts which justify taking the real estate lien;

(2) A conservative estimate of the present market value of the real estate to be mortgaged. (It will not be necessary to submit an appraisal of the property to be mortgaged.);

(3) A brief description of any existing liens on the property, and the repayment terms and the unpaid balance on the bebts secured by existing liens, unless this is accurately reflected on a recent financial statement; and

(4) The name of the title holder and how title of the property is held. (Title evidence need not be required.)

(c) *Forms.* Each real estate lien taken as additional security for the FmHA loans will be taken on Form FmHA 427–1 (State), "Real Estate Mortgage for (State)," unless a State Supplement requires the use of a form of mortgage comparable to that which secures the existing loan(s) to be additionally secured. The notes evidencing the FmHA loans for which the additional security will be taken will be described in the same mortgage.

§ 1965.32 [Reserved]

§ 1965.33 Cosigners—SFH Loans.

See § 1965.129 of Subpart C of this part for servicing SFH loans with cosigners.

§ 1965.34 Non-Program (NP) loans.

Except as set out in the following paragraphs, debtors to FmHA for only NP loans are not eligible to receive any program benefits. Such benefits include limited resource interest rates, reamortization, rescheduling, consolidation, deferral, and appeal rights. Any NP debtor with farmer program loans will be serviced in accordance with regulations applicable to those loans. Any servicing to debtors with only NP loans will be limited solely to the following:

(a) *Subordination.* (1) Subordination of FmHA NP loan mortgages may be permitted to refinance, extend, reamortize, increase the amount of an existing prior lien, or to permit a prior lien *only when the security for the NP loan is also the security for an FmHA Farmer Program loan* and the request for the subordination meets all the requirements for the subordination of the FmHA Farmer Program loan and is in the best interest of the Government. Such actions can only be approved by the State Director.

(2) NP loans of debtors with only NP loans will not be subordinated unless it is in the best interest of the Government.

(b) *Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.* Consent may be given providing that the funds received are applied to the liens in order of lien priority. Such actions can only be approved by the State Director and are subject to the provisions of paragraphs (b) (1) through (5), (d), (h) and (i) of § 1965.13 of this subpart.

(c) *Voluntary conveyance.* Voluntary conveyance of security for NP loans will only be considered when it is clearly in the best interest of the Government. The debtor will not be released from liability for any FmHA debt that exceeds the value of the security plus and additional costs which might result in a charge to the Government such as closing costs and maintenance of the security. Such actions can only be approved by the State Director and will be processed in accordance with the provisions of Subpart A of Part 1955 of this chapter.

(d) *Transfers.* NP loans will not be assumed by an FmHA applicant unless the security and the transferee meet the requirements for an OL or FO loan as applicable. In such cases the transfer will be processed the same as an OL or FO loan being assumed by an eligible applicant. NP loans may be assumed under authorities in § 1965.27(c)(1)(ii) of this subpart. Transfers made without FmHA's approval will be handled under § 1965.27(h) of this subpart.

(e) *Default.* When an NP debtor is in default of the loan and/or security instruments and the default cannot be corrected in a reasonable period of time (usually less than 1 year) the account will be accelerated by the use of Exhibit D and E of Subpart A of Part 1955 (available in any FmHA office). The statement regarding deferrals in Exhibit D will be deleted. If the debtor has not cured the default within the time provided in the acceleration notice, FmHA will proceed with the foreclosure without further notice or any extension of time.

(f) *Leases.* An NP debtor does not need FmHA consent to lease security property.

(g) *Graduation.* NP debtors are not subject to the graduation requirements outlined in Subpart F of Part 1951 of this chapter.

§ 1965.35 Exception authority.

The Administrator or delegate may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of tenants or the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon the request of the State Director with recommendation of the appropriate program Assistant Administrator; or upon request initiated by the appropriate program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1965.36 State Supplements and reference to the OGC.

State Supplements will be prepared, with the advice of the OGC, as necessary to carry out this subpart and forwarded to the National Office for prior or post approval.

§ 1965.37 Redelegation of authority.

The State Director is authorized to redelegate in writing any authority delegated to the State Director in this subpart to one or more of the following State Office employees: Chief, Farmer Programs; Farmer Programs Specialist.

§§ 1965.38–1965.49 [Reserved]

§ 1965.50 OMB Control Number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been assigned OMB Control Number 0575–0086.

* * * * *

Subpart C—Security Servicing for Single Family Rural Housing Loans

48. Section 1965.101 is amended to revise the introductory text to read as follows:

§ 1965.101 Purpose.

This subpart prescribes policies and procedures for servicing actions related to real estate which secures section 502 and section 504 Rural Housing (RH) loans on nonfarm tracts or on farms when the borrower is indebted to Farmers Home Administration (FmHA) for an RH loan(s) *only*, herein referred to as Single Family Housing (SFH) loan(s). Security servicing for RH loans when the borrower is also indebted for Farmer Program loans is under Subpart A of Part 1965 of this chapter.

* * * * *

Dated: January 21, 1986.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 86-2029 Filed 1-31-86; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of San Juan Airlines

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds San Juan Airlines to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

EFFECTIVE DATE: December 26, 1985.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with San Juan Airlines on December 26, 1985 to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilitates the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportation lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restriction.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for Part 238 continues to read as follows:

Authority: Secs. 103 and 238 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1228).

§ 238.3 [Amended]

2. In § 238.3 Aliens in immediate and continuous transit, the listing of transportation lines in paragraph (b) *Signatory lines* is amended by: Adding in alphabetical sequence, San Juan Airlines.

Dated: January 15, 1986.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 86-2298 Filed 1-31-86; 8:45 am]

BILLING CODE 4410-10-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 795

Reporting and Recordkeeping Requirements; OMB Control Numbers and Expiration Dates Assigned Pursuant to the Paperwork Reduction Act

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA amends its table of OMB control numbers to reflect the newly-assigned number to the criminal referral form added in the final rule entitled "Report of Crime or Catastrophic Act."

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Staff Attorney, Office of General Counsel, at the above address. Telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION: On Tuesday, December 31, 1985, the final rule entitled "Report of Crime or Catastrophic Act" (Part 748 of NCUA's Regulations) was published in the **Federal Register** (50 FR 53294). A new OMB control number for collection requirements found in NCUA's new form 2362 was published with the final rule. OMB approved collection requirements for use through July 31, 1988, unless continued and assigned OMB Number 3133-0094 to the collection requirements. Section 795.1(b) of NCUA's Regulations is amended to add the new number. The two preexisting control numbers for other collection requirements found in Part 748 remain in effect.

PART 795—[AMENDED]

1. The authority citation for 12 CFR Part 795 continues to read as follows:

Authority: 12 U.S.C. 1766(a)(11) and 5 U.S.C. 3507(f).

§ 795.1 [Amended]

2. Section 795.1 of the NCUA Regulations lists current OMB control numbers. The following should replace the current display for 12 CFR Part 748 found in § 795.1(b):

12 CFR part or section where identified and described	Current OMB control no.
748	3133-0033, 3133-0034 and 3133-0094.

Dated: January 27, 1986.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 86-2250 Filed 1-31-86; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 24900; Amdt. No. 1313]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Incorporation by reference, Standard instrument.

Issued in Washington, DC on January 24, 1986.

John S. Kern,

Acting Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective 13 March, 1986

Anniston, AL—Anniston-Calhoun County, NDB Rwy 5, Amdt. 14, Cancelled

Aspen, CO—Aspen-Pitkin/Sardy Field, VOR/DME-C, Orig.

Cross City, FL—Cross City, VOR Rwy 31, Amdt. 16

Gainesville, FL—Gainesville Regional, LOC BC Rwy 10, Amdt. 6

Perry, FL—Perry—Foley, NDB Rwy 36, Amdt. 3

Tallahassee, FL—Tallahassee Muni, VOR Rwy 18, Amdt. 8

Tallahassee, FL—Tallahassee Muni, LOC BC Rwy 18, Amdt. 14, Cancelled

Tallahassee, FL—Tallahassee Muni, NDB Rwy 36, Amdt. 18

Tallahassee, FL—Tallahassee Muni, ILS Rwy 36, Amdt. 22

Albany, GA—Albany-Dougherty County, VOR or TACAN Rwy 16, Amdt. 24

Albany, GA—Albany-Dougherty County, LOC BC Rwy 22, Amdt. 6

Albany, GA—Albany-Dougherty County, NDB Rwy 4, Amdt. 10

Albany, GA—Albany-Dougherty County, ILS Rwy 4, Amdt. 9

Albany, GA—Albany-Dougherty County, RNAV Rwy 34, Amdt. 2

Augusta, GA—Daniel Field, NDB Rwy 10, Orig.

Augusta, GA—Daniel Field, NDB/DME-C, Orig.

Cordele, GA—Crisp County-Cordele, NDB Rwy 9, Amdt. 2

Dublin, GA—W.H. "Bud" Barron, VOR-A, Amdt. 3
Eastman, GA—Eastman-Dodge County, RNAV Rwy 2, Amdt. 1
Fitzgerald, GA—Fitzgerald Muni, NDB Rwy 01, Amdt. 3
McRae, GA—Telfair-Wheeler, NDB Rwy 20, Amdt. 7
Metter, GA—Metter Muni, NDB Rwy 09, Amdt. 1
Plains, GA—Peterson Field, VOR/DME-B, Amdt. 1
Savannah, GA—Savannah International, NDB Rwy 9, Amdt. 18
Savannah, GA—Savannah International, ILS Rwy 9, Amdt. 23
Statesboro, GA—Statesboro Muni, LOC Rwy 32, Amdt. 1
Statesboro, GA—Statesboro Muni, NDB Rwy 32, Amdt. 1
Tifton, GA—Henry Tift Myers, VOR Rwy 27, Amdt. 8
Tifton, GA—Henry Tift Myers, VOR Rwy 33, Amdt. 10
Tifton, GA—Henry Tift Myers, NDB Rwy 33, Amdt. 11
Vidalia, GA—Vidalia Muni, NDB Rwy 24, Amdt. 5
Centralia, IL—Centralia Muni, VOR Rwy 36, Amdt. 12, Cancelled
Centralia, IL—Centralia Muni, VOR-A, Orig.
Chicago (Wheeling), IL—Pal-Waukee, ILS Rwy 16, Amdt. 6
Harrisburg, IL—Harrisburg-Raleigh, NDB Rwy 24, Amdt. 8
Pinckneyville, IL—Pinckneyville-Duquoin, NDB Rwy 18, Orig.
Wellington, KS—Wellington Muni, VOR/DME Rwy 17, Orig.
Lake Charles, LA—Lake Charles Muni, LOC BC Rwy 33, Amdt.16
Monroe, LA—Monroe Regional, VOR/DME Rwy 31, Orig.
Battle Creek, MI—W.K. Kellogg Regional, LOC BC Rwy 5, Amdt. 14, Cancelled
Bay City, MI—James Clements Muni, VOR-A, Amdt. 11
Flint, MI—Bishop, VOR Rwy 36, Amdt. 13
Hancock, MI—Houghton County Memorial, VOR Rwy 13, Amdt. 12
Hancock, MI—Houghton County Memorial, VOR Rwy 25, Amdt. 14
Hancock, MI—Houghton County Memorial, VOR Rwy 31, Amdt. 11
Hancock, MI—Houghton County Memorial, VOR/DME Rwy 13, Orig.
Hancock, MI—Houghton County Memorial, VOR/DME Rwy 25, Orig.
Hancock, MI—Houghton County Memorial, VOR/DME Rwy 31, Orig.
Hancock, MI—Houghton County Memorial, LOC-DME BC Rwy 13, Amdt. 8
Hancock, MI—Houghton County Memorial, NDB Rwy 31, Amdt. 8
Hancock, MI—Houghton County Memorial, ILS Rwy 31, Amdt. 9
Houghton Lake, MI—Roscommon County, NDB Rwy 27, Amdt. 8, Cancelled
Mt. Pleasant, MI—Mt. Pleasant Muni, VOR Rwy 27, Amdt. 10
Ontonagon, MI—Ontonagon County, NDB-A, Amdt. 3
Owatonna, MN—Owatonna Muni, VOR Rwy 12, Amdt. 8
Owatonna, MN—Owatonna Muni, VOR/DME Rwy 30, Amdt. 2
Jackson, MS—Allen C. Thompson Field, ILS Rwy 15L, Amdt. 5
West Plains, MO— West Plains Muni, NDB Rwy 36, Orig.
Reno, NV—Reno Cannon Intl, ILS Rwy 16R, Amdt. 7
Lumberton, NJ—Flying W, VOR-A, Orig.
Charlotte, NC—Charlotte/Douglas Intl, VOR Rwy 36R, Amdt. 4
Bismarck, ND—Bismarck Muni, ILS Rwy 31, Amdt. 31
Lancaster, OH—Fairfield County, VOR-A, Amdt. 5
Versailles, OH—Darke County, NDB Rwy 9, Amdt. 6
Pittsburgh, PA—Allegheny County, NDB Rwy 28, Amdt. 22
Pittsburgh, PA—Allegheny County, ILS Rwy 28, Amdt. 27
Melfa, VA—Accomack County, VOR/DME Rwy 3, Amdt. 6
Melfa, VA—Accomack County, NDB Rwy 3, Amdt.6
Newport News, VA—Patrick Henry Intl, LOC BC Rwy 25, Amdt. 12
Newport News, VA—Patrick Henry Intl, NDB Rwy 20, Amdt. 2
Newport News, VA—Patrick Henry Intl, NDB Rwy 25, Amdt. 2
Norfolk, VA—Norfolk Intl, VOR Rwy 23, Amdt. 7
Norfolk, VA—Norfolk Intl, ILS Rwy 23, Amdt. 5
Norfolk, VA—Norfolk Intl, RNAV Rwy 14, Amdt. 4
South Hill, VA—Mecklenburg-Brunswick Regional, NDB Rwy 1, Orig.
Tangier, VA—Tangier Island, VOR/DME Rwy 2, Amdt. 4
Platteville, WI—Grant County, NDB Rwy 25, Amdt. 2
Platteville, WI—Grant County, RNAV Rwy 25, Amdt. 3

Effective 10 January, 1986

Carrollton, OH—Carroll County-Tolson, NDB Rwy 25, Amdt. 4

Note.—The FAA published an amendment in Docket No. 24877, Amdt. No. 1311 to Part 97 of The Federal Aviation Regulations (Vol 51 FR No. 3 Page 341; dated January 6, 1986) under section 97.27 effective February 13, 1986, which is hereby amended as follows: Mountain View, AR—Harry F. Wilcox Mem Fld, NDB-A original rescinded.

[FR Doc. 86-2183 Filed 1-31-86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 202

[Release Nos. 33-6623; 34-22848; 35-24009; IC-14926; IA-1009]

Remittance of Fees to Lockbox

AGENCY: Securities and Exchange Commission.

ACTION: Extension of Temporary Rule.

SUMMARY: The Commission is extending for nine months the effectiveness of a temporary rule, adopted in June 1984, which permits filing and other fees to be remitted to a U.S. Treasury designated lockbox depository located in Pittsburgh, Pennsylvania. This action will permit registrants to continue to use the procedures specified by the temporary rule pending the Commission's consideration of whether to adopt proposed amendments to the rule that will be published in the **Federal Register** within the next two weeks.

EFFECTIVE DATE: February 3, 1986 to November 1, 1986.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Jackson, Special Counsel (202-272-2700), Office of the Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549

SUPPLEMENTARY INFORMATION: In Securities Act Release No. 6540, dated June 27, 1984 [49 FR 27306], the Commission adopted a temporary amendment to rule § 202.3a, to permit filing fees to be remitted to a lockbox depository. Under these amendments, filers may continue to transmit fees along with filings or may transmit required fees to a lockbox depository in Pittsburgh, Pennsylvania either by mail or wire transfer. When the temporary amendments were adopted, the Commission stated that in approximately twelve months, it would consider whether to eliminate payment of fees directly to the Commission and instead mandate payment of fees to a lockbox. On January 30, 1986, the Commission approved issuance of a release that proposes for notice and comment amendments to rule 202.3a which would change its provisions from permissive to mandatory. This release will be published in the **Federal Register** in the near future. Pending its consideration of whether to adopt the proposed changes, the Commission has determined that the effectiveness of temporary rule § 202.3a should be extended for a period of nine months (to November 1, 1986) to permit the continuation of existing procedures.

Administrative Procedure Act

The Commission finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(A), that temporary rule 202.3a relates solely to agency organization, procedure or practice and, therefore, advance notice and opportunity for comment is unnecessary in connection with this action.

By the Commission.

Dated: January 30, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-2427 Filed 1-31-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 6

[T.D. 86-12]

Amendments to the Customs Regulations Concerning Access to Customs Security Areas

AGENCY: Customs Service, Treasury.

ACTION: Interim regulations.

SUMMARY: This document amends the Customs Regulations on an interim basis to require the use and display of a Customs approved identification strip or seal on existing identification cards worn by employees at airports accommodating international air commerce. Uniformed Federal, State, and local enformcement personnel are excepted from the requirement. The additional identification would be required for all non-exempt persons located at, operating out of, or employed by, affected airports, who request access to Customs security areas in order to perform functions associated with their employment. The amendment also requires that an authorized official of the employer attest, in writing, that a background check of employment history and references has been conducted on their affected employees.

DATES: Effective March 5, 1986. Written comments by April 4, 1986.

ADDRESS: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT:

Operational Aspects: Charles P. Bartoldus, Office of Inspection and Control (202-566-2140).

Legal Aspects: Ellen McClain, Office of the Chief Counsel (202-566-2482), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

SUPPLEMENTARY INFORMATION:

Background

Various provisions of the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*), which are made applicable to aircraft by 19 U.S.C. 1644, 49 U.S.C. App. 1509, and § 6.10, Customs Regulations (19 CFR 6.10), provide the statutory authority for Customs officers to control the entry and clearance of aircraft arriving in the U.S. from foreign countries and the inspection of the crew, passengers, baggage, stores, and cargo carried aboard those aircraft. Section 1109 of the Federal Aviation Act of 1985, as amended (49 U.S.C. App. 1509), authorizes the Secretary of Transportation to designate airports as ports of entry for civil air navigation. Section 582, Tariff Act of 1930, as amended (19 U.S.C. 1582), authorizes the Secretary of the Treasury to prescribe regulations for the detention and search of persons and baggage. These regulations are set forth in Parts 6 and 162, Customs Regulations (19 CFR Parts 6 and 162). Implicit in the search and inspection authority and the right to designate airports is the right to maintain a controlled and secure Customs area which facilitates and insures the integrity of the authorized search and inspection.

Customs finds it necessary to improve integrity and security in authorized inspection areas, due in large measure to the recent sharp increases in threats to airport security posed by terrorist organizations. The current regulations in 19 CFR Part 6 are inadequate for controlling access to the Customs security areas to the extent necessary. The arrival of an aircraft from abroad necessitates the services of numerous persons representing various specialties, such as ground crews, refueling personnel, baggage handlers, and food service personnel, among others. While all of these persons may have legitimate business associated with the arrival of an international flight, Customs needs a method by which access to the aircraft and inspection areas will be restricted, as well as some assurance that the service personnel themselves have been found trustworthy by their employers. While the Federal Aviation Administration has general responsibility for security at airports, Customs has determined that it is necessary to amend 19 CFR Part 6 to provide Customs with the needed authority and procedures to achieve these goals at the areas under the Customs jurisdiction. The purpose of this amendment is to establish an identification system for all employees whose duties require access to Customs security areas at airports handling international air commerce, with the exception of uniformed Federal, State, and local enforcement personnel. Because of recent terrorist incidents at foreign airports, threats of violence at U.S. airports, and in an effort to improve the security of these areas by restricting access to authorized employees, Customs will require that employees apply for a Customs approved identification strip or seal to be affixed to existing identification cards once an authorized official of the employer attests that background checks of employment history have been conducted. Customs will issue the identification strip or seal, once satisfied that the issuance of the additional identification will neither endanger the revenue nor threaten the security of the entire security area (which may include the arriving airplane, ramp area, and Customs baggage and passenger inspection facilities).

The requirement for a background investigation of employees will only be required with regard to employees hired after November 1, 1984. For all employees hired before that date, the authorized official of the employer need only attest to the fact that the employee was employed before November 1, 1984.

Further, the amendments provide identification of a "Customs security area" within which the previously described procedures will be enforced. This area may include the deplaning and ramp areas, as defined by the district director of Customs, as well as the baggage and passenger inspection areas. These areas will be posted once designated. In airports with areas dedicated only to international arrivals, the posted area will be restricted at all times. In airports in which international and domestic flights share arrival facilities, the restriction times will be posted to the extent they are identifiable.

Comments

Before adopting the interim regulations as a final rule, Customs will give consideration to any written comments (preferably in triplicate) timely submitted to the Commissioner. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, DC. 20229.

Inapplicability of Notice Provisions

Recent terrorist attacks against European airports and American citizens have pointed out a need to develop adequate and immediate plans for handling high-risk arrivals of

aircraft. Customs is responsible for the protection of arriving passengers, airport personnel, and federal employees while in the Customs security area.

Therefore, in light of the threat to public safety, it has been determined that, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are contrary to the public interest.

E.O. 12291 and Regulatory Flexibility Act

Because the amendment does not meet the criteria for a "major rule" within the meaning of section 1(b) of E.O. 12291, Customs has not prepared a regulatory impact analysis.

Because of the need to expedite the issuance of this regulation, Customs has not yet been able to determine if the regulation will have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601–612). However, Customs will continue to review this matter and will consider any comments submitted on this aspect of the project before issuing a final rule.

Paperwork Reduction Act

The interim regulations are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501). Accordingly, an application for approval of the interim regulations has been submitted to the Office of Management and Budget.

List of Subjects in 19 CFR Part 6

Air carriers, Air transportation, Aircraft, Airports.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Controls Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from and other Customs offices participated in its development.

Amendments to the Regulations

Part 6, Customs Regulations (19 CFR Part 6), is amended as set forth below:

PART 6—AIR COMMERCE REGULATIONS

1. The authority citation for Part 6 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624, 1644, 49 U.S.C. App. 1474, 1509.

2. Part 6 is amended by adding a new § 6.12a, to read as follows:

§ 6.12a. Access to Customs Security Areas.

(a) For the purposes of this seciton, the term "Customs security area" means the federal inspection services area (as provided for by § 6.12(e) of this part), designated for processing passengers, crew, their baggage and effects arriving from foreign countries, as well as the aircraft deplaning and ramp areas and other resticted areas designated by the district director of Customs. These areas will be posted as restricted to the extent possible, and are established for the purpose of prohibiting unauthorized entries or contact with persons or objects.

(b) With the exception of uniformed Federal, State, and local enforcement personnel, all persons located at, operating out of, or employed by any airport accommodating international air commerce, or its tenants or contractors, including air carriers, who have unescorted access to the Customs security areas must openly display or produce upon demand, a Customs approved identification card, or strip or seal to be issued and affixed by Customs to existing airport identification cards. The approved identification card, strip or seal, shall be in the possession of the person in whose name it is issued at all times when he is in the Customs security areas. An approved identification card, strip or seal shall not be issued to any person whose employment if necessitating access to the Customs security area will, in the judgment of the district director, endanger the revenue or the security of the areas. Grounds for denial of access shall include, but are not limited to:

(1) Any cause which would justify suspension or revocation of the identification card under the provisions of paragraph (h) of this section;

(2) Evidence of a pending or past investigation which establishes criminal, or dishonest conduct, or a verified record of such conduct. The district director shall give written notification to any person whose application for access to the Customs security area is denied, fully stating the reasons for such denial. The applicant shall have the opportunity to rebut the denial of his application in writing.

(c) A application for an approved identification strip or seal as required by this seciton, shall be filed by the applicant with the district director on Customs Form 3078. For employees hired on or after, November 1, 1984, an authorized official of the employer shall attest in writing that a background check has been conducted on the applicant, to the extent allowable by law, including, at a minimum, references and employment history, to the extent necessary to verify representations made by the applicant relating to employment in the preceeding five (5) years. For employees hired before November 1, 1984, the authorized offical of the employer need only attest to the fact that the employee was hired before that date. The authorized official of the employer shall attest that to the best of its knowledge, the applicant meets the conditions necessary to conduct duties in the Customs security area. Records of background investigations must be available for verification by Customs for a period of one year following cessation of employment.

(d) An employee may apply, in writing, for a new application under certain circumstances. In such instances, the approved identification shall be promptly submitted by the empployee to the district director. The circumstances justifying the issuance of a new authorization strip or seal are as follows:

(1) A change in employee name;

(2) A change in employee address;

(3) A change in the name or ownership of his employing company; or

(4) A change in employer or airport authority identification card format.

(e) The identification strip or seal shall be removed by the district director when for security reasons it is necessary to change the nature of the identification.

(f) The loss or theft of an identification card, with strip or seal affixed, shall be promptly reported by the holder to the district director, and may be replaced as provided in paragraph (d) of this section.

(g) If an approved identification card is presented by a person other than the one to whom it was issued, such identification strip or seal shall be forthwith removed and destroyed.

(h) An authorized seal or strip may be removed and the district director may revoke or suspend access to the Customs security area for any of the following reasons:

(1) Such approved identification card was obtained through fraud or the misstatement of a material fact;

(2) The holder of such approved identification card is convicted of a felony, or convicted of a misdemeanor involving theft, smuggling, or any theft-connected crime;

(3) The holder permits the approved identification card to be used by any other person, or refuses to openly display or produce it upon the proper demand of a Customs officer;

(4) The continuation of privileges would, in the judgment of the district director, endanger the revenue or security of the area;

(5) The holder refuses or neglects to obey any proper order of a Customs

officer, or any Customs order, rule, or regulation; or

(6) The holder no longer requires access to the Customs security area for an extended period of time. If such a holder returns to duties in the Customs security area within 1 year, a Customs Form 3078 as required by paragraph (c) of this section need not be submitted.

(i) The dsitrict director shall suspend or revoke access to the Customs security area by serving notice of the proposed action in writing upon the holder of an approved identification card and a copy of such notice to the holder's employer. Such notice shall be in the form of a statement specifically setting forth the grounds for revocation or suspension of the privilege and shall be final and conclusive upon the holder unless he shall file with the district director a written notice of appeal within 10 days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed, in duplicate, and shall set forth the response of the holder to the statement of the district director. The holder, in his notice of appeal, may request a hearing.

(j) The following procedures will govern the conduct of a hearing requested under paragraph (i) of this section:

(1) *Notification of and time of hearing.* If a hearing is requested, it shall be held before a hearing officer designated by the Commissioner of Customs or his designee within 30 days following application thereof. The holder shall be notified of the time and place of hearing at least 5 days prior thereto.

(2) *Conduct of hearing.* The holder may be represented by counsel at the revocation or suspension hearing. All evidence and testimony of witnesses in such proceeding, including substantiation of charges and the answer thereto, shall be presented with both parties having the right of crossexamination. A stenographic record of the proceedins shall be made and a copy furnished to the holder. At the conclusion of such proceedings or review of a written appeal, the hearing officer or the district director, as the case may be, shall forthwith transmit all papers and the stenographic record of the hearing, if held, to the Commissioner of Customs or his designee, together with his recommendation for final action.

(3) *Additional arguments.* Following a hearing and within 10 calendar days after delivery of a copy of the stenographic record, the holder may submit to the Commissioner of Customs or his designee, in writing, additional views and arguments on the basis of such record.

(4) *Failure to appear.* If neither the holder nor his attorney appear for a scheduled hearing, the hearing officer shall conclude the hearing and transmit all papers with his recommendation to the Commissioner of Customs or his designee.

(k) The Commissioner or his designee shall render his decision, in writing, stating his reasons therefor, with respect to the action proposed by the hearing officer or the district director. Such decision shall be transmitted to the district director and served by him on the holder.

(l) When an approved identification is required under paragraph (b) of this section, and the district director determines that the application for the identification cannot be administratively processed in a reasonable period of time, any employer may, upon written request, have a temporary approval issued by the district director to his employee if he can show to the satisfaction of the district director that a hardship to his business would result pending issuance of an approved identification.

(1) The temporary identification shall be valid for a period of 60 days. The district director may renew the temporary identification for additional 30-day periods if he determines that the circumstances under which the temporary identification was originally issued continue to exist. The temporary identification strip or seal shall be removed and destroyed by the district director when the permanent approved identification is issued or the privileges granted thereby are withdrawn.

(2) The provisions of this paragraph shall also apply to temporary employees and official visitors requiring access to the Customs security area. In the case of temporary employees, the identification shall be valid for a period of 30 days. In the case of official visitors, the temporary identification strip or seal shall be valid for the day of issuance only, and shall be affixed to a temporary card issued by the district director. Temporary employee and official visitor identifications are renewable for periods equal to their original period of validity.

(3) The temporary identification strip or seal may be removed from any employee or official visitor identification card at any time if, in the judgment of the district director, continuation of the privileges granted thereby would endanger the revenue or if the holder of the temporary identification refuses or neglects to obey any proper order of a Customs officer, or any Customs order, rule, or regulation.

William von Raab,

Commissioner of Customs.

Approved: January 27, 1986.

Edward T. Stevenson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 86-2397 Filed 1-30-86; 3:32 pm]

BILLING CODE 4820-02-M

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19 CFR Part 10

[T.D. 86-13]

Customs Regulations Amendment Relating To Marking Requirements For Cargo Containers

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends that Customs Regulations to relieve the owners or operators of certain cargo containers from countries subject to column 1 of the Traffic Schedules of the United States (TSUS), from the burden of affixing certain identifying markings to them. It has been determined that the containers already display the identity of their owner/operator as well as serial numbers which make individual container identification possible. Further, whether of foreign or domestic manufacture, once exported, these containers are entitled to readmission without compliance with the regulatory marking requirements. Accordingly, the markings required will be limited to those unique identifying marks which already appear on the containers.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Donald H. Reusch, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue N.W., Washington, DC 20229 (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to General Headnote 6, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), containers or holders for imported merchandise, if imported empty; and the usual or ordinary types of shipping or transportation containers or holders, if imported containing or holding articles; and if designed for, or capable of reuse; are subject to tariff treatment as imported articles and as such as are subject to duty upon each importation, unless specifically exempted. Lift vans and other shipping containers of the large ocean-going type are provided for in item 640.30, TSUS, currently dutiable at the rate of 1.3 percent ad valorem, if

imported from countries subject to column 1 of the tariff schedules.

By section 143 of Pub. L. 97–446 (96 Stat. 2342) dated January 12, 1983, Congress temporarily suspended duty on certain of the large ocean-going freight containers imported from column 1 countries, which would be otherwise dutiable under item 640.30, TSUS. Specifically, a new item 911.80 was added to the TSUS which provided for the duty-free entry until December 31, 1986, of containers specially designed and equipped to facilitate the carriage of goods by one or more modes of transport without intermediate reloading. In order to qualify for duty-free treatment under item 911.80, TSUS, a container must have a gross mass rating of at least 40,000 pounds. The legislative history to Pub. L. 97–466 indicates that the subject freight containers will become permanently free of duty on January 1, 1987. (See Presidential Proclamation No. 4707, of December 11, 1979, published in the **Federal Register** on December 13, 1979 (44 FR 72348)).

Regardless of whether dutiable, containers entering the customs territory of the United States are subject to certain requirements concerning the presence of identifying markings. The marking requirements for imported containers are set forth in § 10.41b, Customs Regulations (19 CFR 10.41b), which provides for the release from Customs custody without payment of duty of serially numbered substantial holders or outer containers. Those containers qualifying for treatment under item 911.80, TSUS, are presently subject to the requirements of § 10.41b.

Section 10.41b includes requirements for all types of substantial holders and outer containers for which duty-free entry is sought under one of the three provisos of item 808.00, TSUS. The first proviso in item 808.00, TSUS, permits duty-free entry for substantial holders and containers which are products of the U.S. The second proviso includes foreign-made containers and holders which have been previously imported with duty, if any, having been once paid. The third proviso covers holders and containers which have been specified by the Secretary of the Treasury as instruments of international traffic, including their repair components and accessories and equipment. These amendments only apply to the first and second proviso. They do not pertain to containers or holders entered under the third proviso, as instruments of international traffic. Section 10.41 requires that containers and holders of all descriptions imported under item 808.00 TSUS, display the designation "808.00 (TSUS)", the district and port code numbers for the customs port of entry, the Customs entry number as well as the last two digits of the fiscal year in which duty was paid, the name of the owner, and the owner-assigned serial number. The purpose of these requirements is to enable Customs to determine that duty, if applicable, has previously been paid at the time of first entry.

In regard to the 40,000 pound rated containers which were the subject of Pub. L. 97–446, it is noted that they already bear the identity of the owner or operator, as well as the owner/operator-assigned serial number. Whether foreign-made or of U.S.-manufacture, the containers, once exported, are entitled to be brought back into the U.S. without entry, and duty-free upon compliance with the marking provisions of § 10.41b. Furthermore, a large number of the subject containers are in use and owing to their existing markings and their size, they are readily distinguishable from other containers and holders to which the marking requirements apply.

In view of the circumstances peculiar to containers which were the subject of Pub. L. 97–446, it has been determined that the generally applicable marking requirements prescribed in § 10.41b(c), Customs Regulations (19 CFR 10.41b(c)), serve no useful purpose, and the subject containers should be relieved of compliance with this burdensome requirement. Accordingly, § 10.41(b) is being amended to reflect this determination.

Inapplicability of Public Notice Requirements

Because this amendment merely implements a statutory requirement, relieves a regulatory burden, and involves a matter in which the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), notice and an opportunity for public comment are not necessary.

Regulatory Flexibility Act

This document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 et seq.), or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a major impact analysis is not required.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, Packaging and containers.

Amendments to the Regulations

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10, Customs Regulations (19 CFR Part 10), continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1623, 1624.)

2. Section 10.41b is amended by revising paragraph (c) to read as follows:

§ 10.41b Clearance of serially numbered substantial holders or outer containers.

* * * * *

(c)(1) In the case of serially numbered holders or containers of foreign manufacture, other than those provided for in paragraph (c)(2) of this section, for which free clearance under the second provision in item 808.00, Tariff Schedules of the United States (19 U.S.C. 1202), is claimed, the owner shall place thereon the following markings:

(i) 808.00.

(ii) The district and port code numbers of the port of entry, the entry number, and the last two digits of the fiscal year of entry covering the importation of the holders and containers on which duty was paid.

(iii) The name of the owner, either positioned as indicated in the example below, or elsewhere conspicuously shown on the holder or container.

(iv) The serial number assigned by the owner, which shall be one of consecutive numbers and not to be duplicated. For example: 808.00 * * * 10–1–366–63 * * * Zenda * * * 2468.

(2) In the case of substantial holders or containers of either U.S. or foreign manufacture, specially designed and equipped to facilitate the carriage of goods by one or more modes of transport without intermediate reloading, each having a gross mass rating of at least 40,000 pounds, for which duty-free entry is requested under either the first or the second proviso in item 808.00, Tariff Schedules of the United States (19 U.S.C. 1202), is claimed, only the following clear,

conspicuous and durable markings are required to be on the container:

(i) The identity of the owner or operator of the container.

(ii) The serial number assigned by the owner or operator of the container, which shall be one of consecutive numbers and shall not be duplicated.

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: January 14, 1986.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 86-2289 Filed 1-31-86; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 84F-0165]

Indirect Food Additives; Polymers

Correction

In FR Doc. 86-410, beginning on page 882 in the issue of Thursday, January 9, 1986, make the following corrections:

On page 883, first column, § 177.1655:

a. In the table in paragraph (b), in the limitations column for the substance Monochlorobenzene, "50" should have read "500";

b. In paragraph (d), "polysulfone" was misspelled.

BILLING CODE 1505-01-M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Cefadroxil Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Bristol Laboratories providing for safe and effective use of cefadroxil tablets for treating certain skin and soft tissue infections of cats.

EFFECTIVE DATE: February 3, 1986.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Bristol Laboratories, Division of Bristol-Meyers Co., P.O. Box 4755, Syracuse, NY 13221-4755, filed supplemental NADA 119-688 providing for safe and effective oral use of 50- and 100-milligram cefadroxil tablets in cats for the treatment of certain skin and soft tissue infections caused by cefadroxil-susceptible organisms. The supplemental NADA is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii)(21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(4).

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: (Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 520.314 is amended by revising the introductory text of paragraph (c), by redesignating paragraph (c) (1), (2), and (3) as paragraph (c)(1) (i), (ii), and (iii) and by adding new paragraph (c)(2) to read as follows:

§ 520.314 Cefadroxil tablets.

* * * * *

(c) *Conditions of use.* (1) For use in dogs as follows:

* * * * *

(2) For use in cats as follows:

(i) *Indications for use.* For the treatment of skin and soft tissue infections including abscesses, wound infections, cellulitis, and dermatitis caused by susceptible strains of *Pasteurella multocida, Staphylococcus aureus, Staphylococcus epidermidis,* and *Streptococcus* spp.

(ii) *Amount.* Ten milligrams per pound of body weight once daily.

(iii) *Limitations.* The drug is administered orally. Continue treatment at least 48 hours after the cat has become afebrile or asymptomatic. If no response is seen after 3 days of treatment, therapy should be discontinued and the case reevaluated. Do not treat for more than 21 days. Safety for use in pregnant cats and breeding male cats has not been determined. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: January 27, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86-2237 Filed 1-31-86; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[WH-FRL-2964-9]

National Primary Drinking Water Regulations Volatile Synthetic Organic Chemcials

December 20, 1985.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting the final rule promulgating Recommended Maximum Contaminant Levels (RMCLs) for eight volatile synthetic organic chemicals in drinking water which was published in the Federal Register of November 13, 1985, 50 FR 46880.

FOR FURTHER INFORMATION CONTACT: Joseph A. Cotruvo, Ph.D., Director, Criteria and Standards Division, ODW (WH-550), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202/382-7575).

EFFECTIVE DATE: The final rule is effective December 13, 1985.

SUPPLEMENTARY INFORMATION: The following corrections are made in FR Doc. 85–26415 appearing on 46880 in the issue of November 13, 1985:

1. On page 46882, column 2, line 31, change "100" to "1000".

2. On page 46883, column 3, line 10, change "is appropriate" to "is not appropriate".

3. On page 46888, column 3, lines 18–26, delete the sentence beginning with "Several animal studies" and ending with "to both sexes of mice and to female rats." Also delete the following sentence beginning with "The Draft results" and ending with "from exposure to the compound." Replace the deleted sentences with "The NTP has carried out a bioassay in which p-dichlorobenzene was administered by gavage to both sexes of mice and to female rats. The final results of this bioassay are not yet available".

4. On page 46889, column 2, line 54, insert "not" between does and constitute.

5. On page 46899, column 3, lines 63 and 64, change "draft Regulatory Impact Analysis" to Economic Impact Analysis".

Dated: January 16, 1986

William B. Hedeman,

Acting Assistant Administrator for Water.

[FR Doc. 86–2256 Filed 1–31–86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BERC-370-N]

Medicare Program; Extension of Delay in Implementing Certain Changes to the Prospective Payment System; Hospital Inpatient Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of legislative postponement of certain effective dates of final rules.

SUMMARY: The Federal fiscal year 1985 rules for determining amounts of Medicare payment to hospitals under the prospective payment system and the rate-of-increase limits for hospitals excluded from that system are extended through March 14, 1986 as a result of the December 23, 1985 enactment of Pub. L. 99–201.

FOR FURTHER INFORMATION CONTACT: Linda Magno, (301) 594–9343.

SUPPLEMENTARY INFORMATION: On November 12, 1985, we published a notice in the **Federal Register** (50 FR 46651) to alert the public about the provisions of section 5 of the Emergency Extension Act of 1985 (Pub. L. 99–107) and to identify certain Medicare regulations affected by the legislation. Section 5 of Pub. L. 99–107, which was enacted on September 30, 1985, extended through November 14, 1985 the Medicare payment rules for inpatient hospital services that were in effect on September 30, 1985. On November 14, 1985, Congress passed and the President signed the Temporary Debt Limit Extension Act of 1985 (Pub. L. 99–155). Section 2(d) of Pub. L. 99–155 further extended those Medicare payment rules through December 14, 1985. On December 6, 1985, we published a notice in the **Federal Register** (50 FR 49930) to announce this extension.

Since publication of the December 6 notice, the following laws that further delay the implementation of revised Medicare payment rules have been enacted:

- Pub. L. 99–181, enacted December 13, 1985, extended the delay through December 18, 1985.
- Pub. L. 99–189, enacted on December 18, 1985, extended the delay through December 19, 1985.
- Pub. L. 99–201, enacted on December 23, 1985 and effective December 19, 1985, extended the delay through March 14, 1986.

We are issuing this notice to inform the public that, as a result of the December 23 enactment, revised payment rates for hospitals covered by the prospective payment system, the rate-of-increase limits for hospitals excluded from that system, and the amendments to 42 CFR 412.118 (f)(2) and (f)(3), all of which were originally scheduled to be effective on October 1, 1985 under the September 3, 1985 final rule (50 FR 35646), are now postponed through March 14, 1986. This further postponement also applies to the regulations cited in our November 12 notice, which are as follows: §§ 412.63 (c)(3) and (d); 412.70 (c)(3), (c)(4), (d)(2), and (d)(3), 412.73(c)(3); 412.80(a)(1)(ii)(B); and 412.82(c).

(Secs. 1102, 1871, and 1886 of the Social Security Act; 42 U.S.C. 1302, 1395hh, and 1395ww; sec. 5 of Pub. L. 99–107 as amended by sec. 2 of Pub. L. 99–201)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program)

Dated: January 17, 1986.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 86–2205 Filed 1–31–86; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[Gen. Docket No. 85-245; FCC 86-36]

Proposed Modification of the Table of Frequency Allocations

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: The Federal Communications Commission amends it's Rules to provide a secondary mobile allocation in the 18168–18780 kHz band. This will make available a full complement of HF frequencies for mobile operations.

EFFECTIVE DATE: March 3, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Thomas, Office of Science and Technology, 1919 M Street NW., Washington, DC 20554, (202) 653–8162.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 2

Frequency allocations.

Report and Order

In the matter of amendment of part to allocate the 18168–18780 kHz band on a secondary basis to the Mobile Service, GEN Docket No. 85–245.

Adopted: January 16, 1986.
Released: January 24, 1986.
By the Commission.

1. This Report and Order (*Order*) allocates the 18168–18780 kHz band on a secondary basis to the mobile service for both government and nongovernment use. The Notice of Proposed Rule Making (*Notice*) in this proceeding was adopted by the Commission on August 12, 1985.[1]

2. Comments were filed by the United States Coast Guard (USCG) and the Radio Technical Commission for Maritime Service (RTCM). No reply comments were received.

3. In the *Notice*, we stated that a complement of frequencies in the HF

[1] See Notice of Proposed Rulemaking in General Docket 85–245, 50 FR 40880 (adopted August 12, 1985).

spectrum (3 to 30 MHz) is needed to meet a requirement of the maritime mobile service. A complement of HF frequencies consists of assignments from different bands in the HF spectrum. It is necessary to have access to a full complement of HF frequencies to insure reliable communications at all times with the mobile units. The ability of any one band to provide communications depends on the propagation conditions, which vary with the time of day and the weather. Therefore, some bands are able to provide satisfactory communications at times when others are not.

4. Most of the frequencies of this HF complement were provided for in allocations made in Docket 80–739, Implementation of the 1979 World Administrative Radio Conference.[2] However, the complement of frequencies is incomplete, as no allocation was made for such use between 14990 and 20010 kHz. The U.S. Coast Guard, through the Interdepartment Radio Advisory Committee (IRAC), requested the Commission to initiate a proceeding to amend the Table of Frequency Allocations to include a secondary mobile service allocation in the 18168–18780 kHz band.

5. As we noted in the *Notice*, the band 18168–18780 kHz is allocated on a primary basis to the fixed service for both government and nongovernment use. The main nongovernment application is for long haul common carrier circuits. However, because of the availability of higher quality circuits through satellites or cables, these circuits are infrequently used.

6. The Comments filed by USCG and RTCM in response to the *Notice* supported our proposal for a secondary mobile allocation in this band. Such an allocation will meet the requirements of the maritime mobile service and will have little, if any, impact on the primary fixed use of this band either domestically or internationally. However, if interference should be caused, the secondary mobile operations involved will be required to make any and all necessary adjustments, including terminating operation, to eliminate the interference.

7. The Commission, not having received any objections or alternatives to the proposed allocation, believes that allocating the 18168–18780 kHz band on a secondary basis is the best way to satisfy the HF spectrum requirements of the maritime mobile service and is in the public interest. Therefore, we are modifying § 2.106, the Table of Frequency Allocations, as indicated in the Appendix.

[2] See Second Report and Order in General Docket No. 80–739, FCC 83–511, 49 FR 2357 (adopted November 8, 1983).

Administrative

8. Regulatory Flexibility Act Final Analysis.

I. Need for and Objective of Final Rules

The objective is to allocate on a secondary basis the band 18168–18780 kHz to the mobile service. This will satisfy the spectrum requirement to provide a complement of HF frequencies for both government and nongovernment maritime mobile operations.

II. Summary of Issues Raised by Public Comments

There were no comments filed addressing the matters discussed in the initial regulatory flexibility analysis.

III. Alternative to the Rule

It does not appear that there are any significant alternatives to the rules proposed in the *Notice* that would accomplish the stated objective.

9. Accordingly, it is ordered, that pursuant to the authority found in section 4(i), 301 and 303(r) of the Communications Act of 1934, as amended, (47 U.S.C. 154(i), 301, 303(r)), Part 2 of the Commission's Rules and Regulations is amended as specified in the Appendix. This amendment becomes effective March 3, 1986.

10. It is further ordered, that this proceeding is terminated.

11. For further information concerning this rule making contact Fred Thomas at (202) 653–8112, Office of Science and Technology, Federal Communications Commission, Washington, DC 20554.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 2—[AMENDED]

The authority citation in Part 2 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Section 2.106 is amended by adding a secondary mobile allocation at columns 4 and 5 in the 18168–18780 kHz band.

§ 2.106 Table of frequency allocations.

* * * * *

United States Table		FCC use designators	
Government allocation kHz	Non-Government allocation kHz	Rule part(s)	Special-use frequencies
(4)	(5)	(6)	(7)
* * * * *	* * * * *	* * *	
18168–18780 Fixed mobile	18168–18780 Fixed mobile	Aviation (87) public (23). international fixed	

* * * * *

[FR Doc. 86–2270 Filed 1–31–86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 22

[CC Docket No. 83–1096]

Amendment of the Rules To Allow the Selection From Among Mutually Exclusive Competing Cellular Applications

AGENCY: Federal Communications Commission.

ACTION: Interim waiver of rules.

SUMMARY: The requirements of § 22.913(a)(8) are waived on an interim basis, pending action on petitions for reconsideration of the amendment to the financial qualifications rule. Section 22.913(a)(8) requires applicants to submit an exhibit with their applications including full particulars regarding the cost of construction of the proposed facilities and demonstrating how the applicant intends to finance construction. The Commission's recent amendment of § 22.917 (financial qualifications rule) has created uncertainty however, since the amendment provided that for markets below the top 120 only a tentative selectee needs to file a demonstration of financial qualifications. It is not clear whether the Commission intended to defer the filing of cost data until the

selection of an applicant has been made. Therefore, initial cellular applicants for markets below the top 120 need not submit the exhibit required by § 22.913(a)(8), pending Commission action on reconsideration.

EFFECTIVE DATE: February 3, 1986.

FOR FURTHER INFORMATION CONTACT: Carmen A.C. Borkowski, (202) 632–6450.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 22

Cellular radio service, Communications common carriers, Radio.

Order

In the matter of amendment of the Commission's rules to allow the selection from among mutually exclusive competing cellular applications using random selection or lotteries instead of comparative hearings; CC Docket No. 83–1096.

Adopted January 23, 1986.
Released January 24, 1986.

By the Chief, Common Carrier Bureau.

1. We have received numerous informal inquiries as to whether applicants for cellular systems in markets below the top 120 must submit an exhibit with their applications, in response to § 22.913(a)(8), which requires "An exhibit including full particulars regarding the cost of construction of the proposed facilities and demonstrating how the applicant intends to finance construction. See § 22.917." The uncertainty arises from the fact that the Commission recently amended § 22.917 to provide that for markets below the top 120 only a tentative selectee, a surviving applicant under a full settlement, or an unopposed applicant needs to file a demonstration of financial qualifications. *Memorandum Opinion and Order on Further Reconsideration*, FCC 85–602, released December 3, 1985, *errata*, mimeo 1576, released December 23, 1985, 50 FR 51522, December 18, 1985. It is clear from the text of that Memorandum Opinion and Order that the demonstration of how the applicant intends to finance construction need not be included in the application, but the text is silent as to whether the Commission intended to defer the filing of cost data until the selection of an applicant has been made.

2. In view of the uncertainty as to whether cost data must be included in the application resulting from the rule changes, we have decided *sua sponte* to waive the requirements of § 22.913(a)(8) of an interim basis, pending action on petitions for reconsideration of the amendment to the financial qualifications rule.[1] Until the Commission has had an opportunity to address the petitions for reconsideration,[2] applicants for markets below the top 120 need not submit the exhibit required by § 22.913(a)(8).

3. Accordingly, it is ordered, that the requirements of 47 CFR 22.913(a)(8) are waived for initial cellular applicants in markets below the top 120, pending Commission action on reconsideration.

Federal Communications Commission.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 86–2263 Filed 1–31–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84–791; RM–4807]

TV Broadcast Station in Cedar Rapids, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF television channel 48 to Cedar Rapids, Iowa as that community's fourth commercial television assignment in response to a petition filed by Donna Montgomery.

EFFECTIVE DATE: March 3, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of Amendment of § 73.606(b), table of assignments, TV Broadcast Stations (Cedar Rapids, Iowa); MM Docket No. 84–791, RM–4807.

Adopted: January 17, 1986.
Released: January 24, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 33466, published August 23, 1984 proposing the assignment of UHF Television Channel 48 to Cedar Rapids, Iowa as that community's fourth commercial television assignment, at the request of Donna Montgomery (Petitioner). Petitioner has filed comments reiterating her intention to apply for the channel, if assigned.[1] No other comments were received.

2. UHF Television channel 48 can be assigned to Cedar Rapids, Iowa in compliance with the minimum distance separation requirements of § 73.610 and § 73.698 of the Commission's Rules.

PART 73—[AMENDED]

3. We believe the assignment of a fourth local commercial television assignment at Cedar Rapids is in the public interest. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g), and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective March 3, 1986, the Television Table of Assignments, § 73.606(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel no.
Cedar Rapids, IA	2, 9–, 28+, and 48–

4. It is further ordered, that this proceeding is terminated.

5. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–2267 Filed 1–31–86; 8:45 am]

BILLING CODE 6712-01-M

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[1] Petitions requesting reconsideration of the Commission's modification of the financial rule were recently filed by Mobile Communications Corporation of America and the Cellular Telecommunications Industry Association.

[2] The Commission will act expeditiously to address these petitions, once the pleading cycle has closed, in order to set forth clearly what financial showings must be included in applications.

[1] Petitioner's comments were not timely filed, but will be accepted for the purpose of permitting her to reaffirm her interest in the proposed channel.

47 CFR Part 73

[MM Docket No. 85-66; RM-4874]

TV Broadcast Station in Klamath Falls, OR; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule (corrected).

SUMMARY: This action corrects paragraph two of the Report and Order in this processing concerning the assignment of a TV channel in Klamath Falls, Oregon, published on October 1, 1985, 50 FR 40022.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

Note.—The attached is the complete text of the Final Rule action with the corrected paragraph 2.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, TV broadcast stations (Klamath Falls, OR); MM Docket No. 85-66, RM-4874.

Adopted: September 19, 1985.
Released: September 25, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 FR 14953, published April 16, 1985, requesting comments on the assignment of UHF TV Channel 31 to Klamath Falls, Oregon, at the request of Sunshine Television, Inc. ("petitioner"). Petitioner filed comments reiterating its intention to apply for the channel, if assigned. No other comments were received. Channel 31 can be assigned to Klamath Falls in compliance with the Commission's minimum distance separation and other technical requirements.

2. We note that the petitioner wishes to utilize Channel 31 at Klamath Falls as a satellite station for its Medford television station, KDRV. In filing an application for this channel, it should be aware that if its proposed satellite use overlaps the coverage now provided by its Medford operation, such applications are considered on a case-by-case basis. See § 73.3555, Note 5 of the Commission's Rules.

PART 73—[AMENDED]

3. We believe the public interest would be served by assigning Channel 31 to Klamath Falls as its second local commercial service. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective November 1, 1985, the Television Table of Assignments, § 73.606(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Klamath Falls, OR	2 -, *22 +, and 31.

4. It is further ordered, that this proceeding is terminated.

5. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-2268 Filed 1-31-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-175; RM-4908]

FM Broadcast Station in Sioux Falls, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allocates FM Channel 261A to Sioux Falls, South Dakota, at the request of Sioux Falls College. The license of Station KCFS, Sioux Falls, is modified to specify operation on the new frequency in lieu of its present Channel 211A.

EFFECTIVE DATE: March 6, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or intrerpreted or applied by specific sections are cited to text.

Report and Order; Proceeding Terminated

In the matter of Amendment of § 73.202(b), table of allotments, FM broadcast stations, (Sioux Falls, South Dakota); MM Docket No. 85-175, RM-4908.

Adopted: January 17, 1986.
Released: January 28, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 FR 25430, published June 19, 1985, proposing the allocation of Channel 261A to Sioux Falls, South Dakota, and its possible reservation for noncommercial educational use, at the request of Sioux Falls College ("petitioner"). The Commission also proposed to modify petitioner's license for Station KCFS, Channel 211A, to specify operation on the new frequency. No oppositions were received.

2. Petitioner filed comments supporting the proposal. It states that it currently operates Station KCFS on Channel 211A which serves as the College's campus radio station. The College has also been granted a construction permit for Station KCSD on Channel 215A which will provide Sioux Falls with National Public Radio programming. By the terms of the agreement with Great Plains Educational Trust ("Great Plains"), as detailed in the *Notice*, petitioner must, in the near future, vacate Channel 211A and thus will be able to continue to provide its present level of service to the community absent the allocation of Channel *261A.

3. The *Notice* also sought comments on whether Channel *261A, if allocated, should remain a commercial frequency or whether it should be reserved for noncommercial educational use. Petitioner states that its present plans do not contemplate the provision of any service other than noncommercial educational programming. However, it believes that in future years, should circumstances change, some advantage might accrue to the College if the Commission were to allocate the channel on an unreserved basis.

4. The Commission does not generally reserve channels within the commercial portion of the FM band for noncommercial educational service, unless such use is precluded by a TV Channel 6 station or by Canadian or Mexican allotments. Here, neither of these situations exist. Sioux Falls currently receives commercial FM service from five local stations and non-commercial educational service from four such stations. We believe that the public interest would be served by

allocating Channel 261A to Sioux Falls but do not believe the channel should be reserved for noncommercial educational use. We shall also modify the license of Station KCFS to operate as a noncommercial station on non-reserved Channell 261A. There remain a number of FM channels available should an interest be expressed in providing an additional commercial service.

PART 73—[AMENDED]

5. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective March 6, 1986, the FM Table of Allotments, § 73.202(b) of the Rules, is amended with respect to the community listed below, as follows:

City	Channel No.
Sioux Falls, SD	223, 228A, 243, 247, 261A, 284.

6. It is further ordered, that pursuant to section 316 of the Communications Act of 1934, as amended, the license of Sioux Falls College for Station KCFS, Sioux Falls, South Dakota, is modified effective March 6, 1986, to specify operation on Channel 261A in lieu of Channel 211A. The license modification for Station KCFS is subject to the following conditions:

(a) The licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facilities.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission's Rules.

7. It is further ordered, that the Secretary of the Commission shall send a copy of this *Report and Order* by certified mail, return receipt requested, to Sioux Falls College, 1501 S. Prairie, Sioux Falls, South Dakota 57101, and to petitioner's counsel, Lauren A. Colby, 10 East 4th Street, P.O. Box 113, Frederick, Maryland 21701.

8. It is further ordered, that this proceeding is terminated.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Medin Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 86–2266 Filed 1–31–86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 50950–5182]

Tanner Crab Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of season closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the Tanner crab fisheries in the Westside and Southeast Sections of the Kodiak District of Registration Area J must be closed in order to protect the Tanner crab stocks. The Secretary of Commerce therefore issues this notice closing fishing for Tanner crabs by vessels of the United States in the Westside and Southeast Sections. This action is intended as a management measure to conserve Tanner Crabs.

DATE: This notice is effective at noon, Alaska Standard Time (AST), January 29, 1986. Public comments on this notice of closure are invited until February 13, 1986.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data on which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m., AST, weekdays) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (NMFS Fishery Management Biologist), 907–586–7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act, provides for inseason adjustments of season and area openings and closures. Implementing regulations at § 671.27(b) specify that notices of these adjustments will be issued by the Secretary of Commerce under criteria set out in that section.

Section 671.26(f) establishes six districts within Registration Area J to independently manage individual Tanner crab stocks. One of these districts is the Kodiak District, which is further subdivided into eight sections enabling management of localized Tanner crab stocks. The 1986 fishing season in these sections began on January 15, (50 FR 47549, November 19, 1985). Reasons for these closures follow.

In the Westside Section, Tanner crabs have been delivered by 14 vessels through January 24. From January 16 to 18, the catch per unit of effort (CPUE) declined from approximately 26 crabs per pot to 6 crabs per pot. Moreover, vessel operators fishing the Westside Section have reported the presence of a substantial number of barren female Tanner crabs. This may indicate that recent reproductive success in this section has been less than originally expected.

In the Southeast Section, approximately 17 vessels have landed Tanner crabs as of January 23, the CPUE declined from about 106 crabs pere pot on January 15 to the current level on January 23 of 20 crabs per pot, indicating a rapid depletion of the available Tanner crab stock.

Based on the rapidly declining CPUE so early in the fishery in both sections and reports of barren females in the Westside Section, the Regional Director has determined that the condition of the Tanner crab stocks in these sections of the Kodiak District are substantially different from the conditions anticipated on November 1, 1985, the beginning of the fishing year, and that these differences reasonably support the need to protect these Tanner crab stocks. These sections, as defined in § 671.26(f)(1)(i), are closed by this notice until noon, Alaska Daylight Time, April 30, 1986, at which time the closure of these sections prescribed in Table 1 of § 671.21(a) will begin.

This closure will become effective after this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of closure may be submitted to the Regional Director at the address stated above. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the Westside and Southeast Sections of the Kodiak District will be subject to damage by overfishing unless this closure takes effect promptly. The Agency, therefore, finds for good cause that advance opportunity for public comment on this notice of closure is contrary to the public interest and that no delay should occur in its effective date.

This action is taken under the authority of section 305(e) of the Magnuson Act.

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 29, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-2302 Filed 1-29-86; 4:08 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 22
Monday, February 3, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Change in the Customs Service Field Organization—Brunswick, GA

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule; solicitation of comments.

SUMMARY: This document proposes to amend the Customs Regulations to change the Customs field organization by extending the geographical limits of the port of entry at Brunswick, Georgia. Currently, Customs officers at the port service many locations which are outside the Brunswick city limits, those limits having been the unofficial port limits. This proposed expansion will better serve the public by including several locations routinely requiring Customs service within the official port limits.

DATE: Comments must be received on or before April 4, 1986.

ADDRESS: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, Room 2426, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Richard Coleman, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202–566–8157).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, Customs proposes to amend § 101.3, Customs Regulations (19 CFR 101.3), by extending and officially defining the geographical limits of the port of entry of Brunswick, Georgia, located in the Savannah, Georgia, Customs District in the Southeast Region.

Currently, there is no official definition of the Brunswick port limits. The Brunswick city limits have been serving as the port limits. However, Customs officers at the port routinely service many locations which are outside the city limits, and an additional out-of-port terminal facility recently began operation. Therefore, this proposed change would expand the Brunswick port limits to include those several locations now receiving service.

The proposed expanded port limits are as follows: Beginning from the intersection of the boundary between the counties of Camden and Glynn and the Atlantic Ocean, and proceeding in a northwesterly direction along the Little Satilla River to U.S. Highway Interstate 95; then in a northeasterly direction along U.S. Highway Interstate 95 to the boundary between McIntosh and Glynn Counties; then in a easterly direction along the Altahama River to the Atlantic Ocean; then in a southerly direction along the Atlantic coastline to the place of beginning.

If the proposed change is adopted, the list of Customs regions, districts, and ports of entry in § 101.3(b) Customs Regulations, will be amended accordingly.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Authority

This change is proposed under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by E.O. No. 10289, September 17, 1951 (3 CFR 1949–1953 Comp. Ch. II) and pursuant to authority provided by Treasury Department Order No. 101–5 (47 FR 2449).

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Imports, Organization.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal. Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although this change may have a limited effect upon some small entities in the Brunswick, Georgia, area, it is not expected to be significant because the extension of the limits of Customs ports of entry in other locations has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act. Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendment, if adopted, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

Because the proposed amendment relates to the Customs field organization, pursuant to Section 1 (a) (3) of E.O. 12291 this proposal is not subject to that E.O.

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved January 14, 1986.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 86–2290 Filed 1–31–86; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 172, 175, 176, 177, 179, and 181

[Docket No. 75N-0190]

Vinyl Chloride Polymers; Withdrawal of Proposal

AGENCY: Food and Drug Administration.

ACTION: Withdrawal of proposal.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing the notice of proposed rulemaking that would have restricted the uses of vinyl chloride polymers in contact with food. The agency is taking this action because, based upon new scientific and legal developments, FDA has decided that the actions outlined in the proposal no longer represent the appropriate course of regulatory action.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food and Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 3, 1975 (40 FR 40529), FDA proposed to prohibit some uses of vinyl chloride polymers (homo- and copolymers), including their use in semirigid and rigid food-contact articles such as bottles and sheet, and to interim list the use of these polymers in water pipe.

Since publication of the proposal, there have been a number of significant developments that bear on the agency's position concerning regulation of vinyl chloride polymers. The major developments include: (1) Vastly improved production technology has made it possible for manufacturers to succeed in reducing the level of residual vinyl chloride monomer in vinyl chloride polymer by a factor of nearly 1 million; (2) the agency has developed a policy concerning the regulation of food and color additives that may contain carcinogenic impurities; and (3) FDA now believes that developments in scientific technology and its experience with risk assessment procedures make it possible for the agency to determine whether the use of additives that contain carcinogenic impurities is safe. As a consequence of these developments, many of the issues raised by the September 1975 proposal and by the comments on that proposal are moot. FDA now believes that the use of vinyl chloride polymers can be regulated provided that such polymers meet certain limitations on the levels of residual vinyl chloride monomer.

In the **Federal Register** of March 15, 1977 (42 FR 14302), FDA reorganized and republished regulations formerly codified in 21 CFR Part 121. In the present document, FDA will refer to the old Part 121 section numbers and, if appropriate, to the recodified section numbers.

Elsewhere in this issue of the **Federal Register**, FDA is proposing: (1) To provide for the safe use of vinyl chloride polymers; (2) to codify all known prior sanctions of vinyl chloride polymers; (3) to provide for the use of certain previously unregulated vinyl chloride polymers in manufacturing vinyl chloride bottles; and (4) to delete vinyl chloride-vinylidene chloride copolymers from the list of materials that may be used as coatings on fresh citrus fruit (21 CFR 172.210).

FDA received 190 comments on the September 1975 proposal. One hundred fifty-four of these comments did not include any data on the use of vinyl chloride polymers. Of these comments, 86 supported the proposal; 57 expressed concern about the risk associated with the use of vinyl chloride polymers; and 11 opposed the proposed ban on rigid and semirigid vinyl chloride polymers. The remaining 36 comments did submit data or legal arguments for FDA's consideration.

In addition, the docket contains 15 supplements to comments; 21 letters from industry, professional societies, public interest groups, and individuals; 11 memoranda of meetings; and 11 memoranda of telephone conversations. None of the additional letters and memoranda contained data, but the 15 supplements to comments contained scientific data that FDA reviewed and evaluated.

All comments received in response to the proposal are addressed in this document.

A. Nomenclature

1. One comment stated that vinyl chloride should be referred to as "vinyl chloride monomer" or as "VCM" in the various proposed regulations to prevent any misunderstanding about what particular substance is being prohibited. The comment further stated that the identification of vinyl chloride monomer should include its chemical formula (C_2H_3Cl), its alternative name "chloroethene," and its Chemical Abstracts Registry Number (CAS Reg. No.).

FDA agrees that it should use the CAS Reg. No. and the term "vinyl chloride monomer" to identify the monomer. It has done so in the proposal published elsewhere in this issue of the **Federal Register**. The term "chloroethene" is not a commonly used term for vinyl chloride. FDA concludes that vinyl chloride is adequately defined by its chemical formula and its CAS Reg. No.

2. One comment stated that vinyl chloride-vinylidene chloride copolymer should be renamed vinylidene chloride-vinyl chloride copolymer to reflect the relative dominance of the monomers. It noted that vinylidene chloride is the more dominant monomer in copolymers of vinyl chloride and vinylidene chloride.

FDA concludes that vinyl chloride-vinylidene chloride copolymers should continue to be so named. Vinyl chloride has customarily been the first monomer cited in industry usage and in food additive regulations when referring to copolymers, regardless of the major component. Although there may be some advantage to naming copolymers by the predominance of monomers, renaming the copolymers would only lead to confusion and unnecessary paperwork.

B. Administrative—Legal

3. Five comments stated that FDA did not have the statutory authority to issue food additive regulations prescribing conditions of use for a substance that may not reasonably be expected to become a component of food. The comments claimed that there was no expectation of migration of vinyl chloride monomer into food from the use of vinyl chloride polymer packaging.

Section 201(s) of the Federal Food, Drug, and Cosmetic Act (the act) defines a food additives as "any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food, and including any source of radiation intended for any such use) * * *" (21 U.S.C. 321(s)). Section 409(d) of the act (21 U.S.C. 348(d)) authorizes FDA to establish regulations prescribing, with respect to any particular use of a food additive, the conditions under which such additive may be safely used.

Vinyl chloride polymer becomes a component of food (a food additive) when the unreacted vinyl chloride monomer trapped in the polymer matrix migrates from the polymer to food. The data, both experimental and theoretical, produced by industry and by FDA laboratories about vinyl chloride polymers demonstrate that, under

normal conditions of use, migration of vinyl chloride monomer will occur from all types of vinyl chloride polymer food-contact articles, regardless of the levels of the monomer in the articles. The amount of vinyl chloride monomer that migrates to food will depend on the initial residual monomer content, the time and temperature of exposure to food, the thickness of the polymer, and such other properties of the polymers as their permeability and whether they have been plasticized.

One example of the work done on vinyl chloride monomer is that of Ethyle Corp. In a series of reports dating from January 17, 1975, Ethyl proposed and utilized a diffusion model that accurately predicted levels of vinyl chloride monomer migration into food simulating solvents. Based on this model's success in predicting the observed levels of monomer migration, Ethyle's diffusion model can be relied upon to predict the level of such migration even when the monomer is not detectable by current analytical capabilities.

On the basis of existing theories, diffusion models, and available experimental data, FDA concludes that vinyl chloride monomer is capable of migrating into food from vinyl chloride polymers in more than insignificant amounts. The use of models capable of predicting monomer migration has been addressed in *Monsanto* v. *Kennedy*, 613 F.2d 947 (1979), where the court stated: "Nor is it necessary that the level of migration be significant with reference to the threshold of direct detectability, so long as its presence in food can be predicted on the basis of a meaningful projection from reliable data."

FDA has further concluded that, given the fact that vinyl chloride monomer has been shown to be a carcinogen, the projected vinyl chloride monomer migration from vinyl chloride polymers under the conditions of use currently specified in its regulaions is not so small as to present no public health or safety concerns. The agency finds, however, that safety can be assured through the establishment of limits on residual monomer concentrations, as proposed elsewhere in this issue of the **Federal Register**. The agency, therefore, is exercising its authority under section 409 of the act to promulgate regulations that would prevent the marketing of polymers with unsafe levels of vinyl chloride monomer.

4. One comment contended that there was no reasonable expectation of migration and, also, that the polymers were not food additives. The comment requested a hearing if its point of view was not incorporated into the agency's final action on vinyl chloride polymers.

FDA disagrees with this comment. FDA has explained why it has concluded that the vinyl chloride monomer will migrate in response to the preceding comment. In regard to a request for a public hearing, section 409(f)(1) of the act provides that, within 30 days after publication of a final order on a food additive, any person adversely affected by the order may file objections to the order and may request a public hearing on the matter. There are no provisions in section 409 of the act for requesting a public hearing in response to a notice of proposed rulemaking, although this request may be made in response to final regulations on this subject.

5. Two comments stated that no final action to ban rigid and semirigid vinyl chloride polymers should be taken until an examination has been made of the potential migration from currently produced vinyl chloride polymers that contain low levels of residual vinyl chloride monomer.

FDA has reviewed the data on the migration of vinyl chloride monomer from polymers that contain varying levels of residual monomer (Division of Chemistry and Physics memorandum dated July 27, 1979). The agency concludes that migration of the monomer into food will occur if there is any residual monomer in the polymer. The new proposed regulations published elsewhere in this issue of the **Federal Register** reflect this determination.

6. Two comments objected to permitting any use of vinyl chloride polymers in contact with food because of the presence of a carcinogen (vinyl chloride monomer) in these polymers. The comments claimed that, by permitting the use of these polymers, FDA was, in effect, setting a tolerance for a carcinogen at the level of sensitivity of the analytical methods to detect vinyl chloride monomer. The comment stated that all uses of vinyl chloride polymers should be banned until manufacturers can produce vinyl chloride polymers that contain no vinyl chloride monomer.

FDA agrees that vinyl chloride polymers with unsafe levels of vinyl chloride monomer should not be permitted on the market. However, FDA does not believe that banning vinyl chloride polymers is necessary because these polymers now can be manufactured with residual vinyl chloride monomer levels that are at least one million times lower than the residual monomer levels in polymers that were marketed in the early 1970's. Additionally, since the publication of the 1975 notice of proposed rulemaking, scientific developments, such as improved risk assessment procedures, have led FDA to reconsider how it regulates food and color additives when the additive as a whole contains carcinogenic impurities but has not been shown to be a carcinogen in appropriate testing. As a result of its reconsideration, the agency has decided that it can approve or list the use of such additives when an assessment shows that the risk from the use of these additives, with their carcinogenic impurities, is so low that there is a reasonable certainty of no harm from their use. The application of this approach to vinyl chloride polymers is described in detail in the notice of proposed rulemaking appearing elsewhere in this issue of the **Federal Register**.

7. Four comments suggested that proposed § 121.2009 *Vinyl chloride polymer resins*, which listed the prior-sanctioned uses of vinyl chloride polymers, should be revised to permit the use of polymers listed in that section in articles that will contact all types of food or should be revised to allow the use of additional types of articles produced from vinyl chloride polymers.

The agency finds that such a revision is inappropriate. Proposed § 121.2009 was intended to be a listing of those uses of vinyl chloride polymers that are the subject of prior sanctions, i.e., those uses that were approved by FDA or the U.S. Department of Agriculture (USDA) before September 6, 1958. The list of such uses cannot be altered or expanded to include additional uses without proof that those additional uses were approved by FDA or USDA before that date.

Therefore, the agency cannot expand the prior-sanctioned uses of vinyl chloride polymers to cover contact with all types of food as proposed in these comments.

In the 1975 proposal, FDA listed those prior sanctions for which it could find evidence and explicitly solicited evidence of any additional sanctions. No evidence of other prior sanctions was submitted to FDA. FDA, however, located in its own files evidence of four additional prior sanctions. (1. Letter to Firestone Plastics Co., Pottstown, PA, dated April 20, 1951, permitting the use of vinyl chloride resins as films for food packaging. 2. Letter to Firestone Plastics Co., Pottstown, PA, dated October 5, 1956, permitting the use of rigid polyvinyl chloride (homopolymer) sheet for packaging poultry. 3. Letter to Firestone Plastics Co., Pottstown, PA,

dated February 21, 1957, permitting the use of vinyl chloride and vinyl chloride-acetate resins for "food wrapping purposes." 4. Letter of Borden Co., Santa Barbara, CA, dated August 15, 1957, permitting the use of vinyl chloride polymers as tubing for food-contact use.) The agency has included these sanctions in its proposal published elsewhere in this issue of the **Federal Register**. The agency believes that all valid prior sanctions of vinyl chloride polymers are set forth in the new proposal.

8. Two comments stated that the wording of proposed § 121.2009(a)(3) should be revised to provide a proper description of the materials used for coating conveyor belts. The comments asserted that these materials are blends of vinyl chloride homopolymer and butadiene or butadiene/acrylonitrile copolymer rather than "vinyl chloride/butadiene" or "vinyl chloride/butadiene/acrylonitrile" copolymer, as described in the proposal.

The original letters received by FDA on the conveyor belt coatings referred to the coatings as "resins," a term broadly applied to any thermoplastic material. Although the letters that FDA wrote in response refer to the conveyor belt coatings as copolymers, the coatings were never identified as copolymers by the manufacturers. The agency, in reviewing these records, finds that the records contain no data that would limit the prior sanctions to copolymers rather than blends.

Accordingly, in the proposal published elsewhere in this issue of the **Federal Register**, FDA has revised § 181.37 (proposed as § 121.2009(a)(3)) to use the term "resin," rather than "copolymer," to refer to both the resin blend and the copolymer.

9. One comment stated that all food packaged in vinyl chloride polymers or prepared with equipment in which the food will come into contact with vinyl chloride polymers should be so labeled.

FDA has considered this comment and has concluded that the requested labeling is not necessary to ensure the safety of foods that contact vinyl chloride polymers. In a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**, FDA sets forth proposed regulations that contain limitations on the amount of residual vinyl chloride monomer that may be present in various types of vinyl chloride food contact surfaces. FDA also sets forth in that proposal the basis on which it has tentatively concluded that vinyl chloride polymers that meet the proposed limitations are safe for food-contact use. Therefore, there is no need to label foods that have contacted vinyl chloride polymers.

10. One comment stated that the use of vinyl chloride polymers as coatings on fresh citrus fruits, which is permitted under 21 CFR 121.1179 (now 21 CFR 172.210), has been discontinued.

After publication of the 1975 proposal, the major producer of vinyl chloride-vinylidene chloride copolymers informed FDA that it was unaware of any market for the coatings on fresh citrus fruit (Telecommunication, M. Flood to J. Cobler, September 30 and October 3, 1983, Dow Chemical Co.). On the basis of this information, the agency is proposing elsewhere in this issue of the **Federal Register** to revoke the regulation for the use of vinyl chloride polymers as coatings on fresh citrus fruit.

11. Four comments were received objecting to the inclusion of rigid and semirigid polymers in § 121.106 *Substances prohibited from use in human food* (now 21 CFR Part 189).

FDA has now completed its evaluation of all safety data pertinent to the use of rigid and semirigid vinyl chloride polymers and has tentatively concluded that safe conditions of use can be prescribed for these polymers. Therefore, rather than banning the use of these polymers, elsewhere in this issue of the **Federal Register**, FDA is proposing to approve certain uses of these substances.

C. Chemistry

12. Seven comments stated that one or more of the proposed regulations should be revised to permit all uses of vinyl chloride polymers for which there is no reasonable expectation of migration of vinyl chloride monomer to food.

Five of these comments contained data for calculations to support the contention that when a food-contact article does not contain detectable levels of vinyl chloride monomer, the potential amount of migration of this monomer is so insignificant as to make it unreasonable to expect that vinyl chloride polymer will become a component of food. One comment further stated that a regulation permitting the use of all vinyl chloride polymers when there was no detectable residual vinyl chloride monomer in the food-contact articles or not detectable migration of vinyl chloride monomer to food would adequately protect the public health.

A number of these comments discussed specific processes used to remove "all" residual vinyl chloride monomer from vinyl chloride polymers. According to the comments, these processes produced polymers in which there were either very low levels (i.e., 2 to 50 parts per billion (ppb)) or no detectable amount of residual vinyl chloride monomer because the steps taken during these fabrication processes were adequate to remove all of the residual vinyl chloride monomer.

On the basis of all available evidence, FDA has concluded that under normal use conditions, migration of vinyl chloride monomer will occur from all types of vinyl chloride polymer articles (see response to comment 3). The amount of vinyl chloride monomer that will migrate is determined by the nature of the articles (e.g., film, bottle, or coating); the residual vinyl chloride monomer content; and the conditions of use (time and temperature of exposure to food).

The agency is aware that over the past 10 years, the manufacturers of vinyl chloride polymer products have succeeded in reducing the levels of residual vinyl chloride monomer by a factor of nearly a million. However, the data that FDA has received from industry clearly establish that vinyl chloride polymers still contain measurable levels of vinyl chloride monomer, and that available diffusion theory relates the level of monomer in the polymer to the level of monomer in the food, even though the level may be below current analytical detection limits. Therefore, FDA concludes that regulation should be based on safe upper limits of migration rather than the level of detectability.

13. One comment stated that as the level of residual vinyl chloride monomer in a vinyl chloride polymer is reduced, there is a corresponding reduction in the migration of the monomer. The comment theorized that there are sites in a polymer to which some monomer can attach. These sites are called "active binding sites." The comment asserted that these active binding sites prevent migration of the monomer when there is less than 0.1 part per million of residual monomer. The comment argued that as a result, FDA had no authority to regulate the polymer when it contained such low levels of the monomer.

FDA finds that the available experimental data on the process of migration of vinyl chloride monomer from vinyl chloride polymers do not support this theory (Division of Chemistry and Physics memorandum dated July 27, 1979).

FDA's evaluation of the data on vinyl chloride migration that were submitted as comments to the 1975 proposal by Ethyl Corp. revealed that under normal use condition, migration of vinyl chloride monomer will occur from all

types of vinyl chloride polymers, regardless of the monomer level in the polymers. Although the alternative "active site" theory, if correct, would predict zero migration of vinyl chloride monomer to food at some minimum residual monomer level, no experimental data have been submitted to FDA that would confirm the theory. A more detailed discussion of the migration issue is contained in the notice of proposed rulemaking published elsewhere in this issue of the **Federal Register.**

14. One comment outlined a mathematical model that reportedly predicted the extractable levels of vinyl chloride monomer from any level of residual vinyl chloride monomer in vinyl chloride polymers. The comment stated that, based on the model and the low concentration of residual vinyl chloride monomer in its product, there is not a reasonable possibility of migration of vinyl chloride monomer.

FDA disagrees and finds, upon evaluation of the model, that the model predicts zero migration only if there is no monomer in the food container (Division of Chemistry and Physics memorandum dated July 27, 1979). FDA is not aware at this time of any manufacturing process that can produce vinyl chloride polymers without some level of residual vinyl chloride monomer being present. The diffusivity of the vinyl chloride monomer is discussed briefly in comment 12 and at length in the notice of proposed rulemaking published elsewhere in this issue of the **Federal Register.**

15. Three comments stated that the proposed regulations should be revised to exempt specific types of packaging such as laminates and packaging for dry solids. The comments stated that food packaged in such containers would not be expected to contain vinyl chloride monomer as a result of migration from the packaging materials.

As discussed in response to comment 12, the agency concludes that use of vinyl chloride polymers as components of the types of packaging materials described in these comments will result in low levels of migration of vinyl chloride monomer. However, the agency is proposing to permit such use of vinyl chloride polymers, with limitations on the levels of residual vinyl chloride monomer, as set forth in the proposed rule published elsewhere in this issue of the **Federal Register.**

16. One comment stated that the resurictions on the use of rigid and semirigid articles should be revised to permit their use with dry food, or that the proposed restrictions in the regulations for adjuvants should be eliminated.

As explained in the proposal published elsewhere in this issue of the **Federal Register,** based on the improvements in the manufacturing process for vinyl chloride polymers and on other scientific and legal developments, FDA now believes that it can approve the use of vinyl chloride polymers in rigid and semirigid articles not only with dry food but also with aqueous, alcoholic, and fatty foods. Because FDA is no longer proposing to ban these uses of rigid and semirigid vinyl chloride polymers, the question of restriction of adjuvants for use in rigid and semirigid vinyl chloride polymers is moot. However, FDA is proposing to delete certain adjuvants currently regulated for use in vinyl chloride/vinylidene chloride copolymer coatings for fresh citrus fruit. The use of this copolymer for coating fresh citrus fruit was discontinued several years ago and there is no longer a need for the regulation. The deletion of this use of these adjuvants from FDA's regulations has no effect on their other regulated uses.

D. Toxicology

17. One comment stated that the use of vinyl chloride polymers in rigid and semirigid food-contact articles should be permitted on an interim basis pending the outcome of studies necessary to demonstrate the safety of such polymers. The comment stated that FDA had based the proposed regulations on preliminary reports, speculation, and rumors, and that animal feeding studies to demonstrate the toxicity of vinyl chloride monomer when ingested were now underway and were expected to be completed within 30 months.

Since this comment was submitted, FDA has received four reports of completed bioassay studies on the carcinogenicity of vinyl chloride monomer. These include: (1) Feron et al. chronic rat oral study performed at the CIVO Institute TNO in the Netherlands (*Food and Cosmetics Toxicology,* 19:317–333, 1981); (2) Maltoni et al. rat study on vinyl chloride monomer by both oral ingestion and inhalation routes of exposure (*Annals of the New York Academy of Sciences,* 246:195–218, 1975; *Environmental Health Perspectives,* 41:3–29, 1981); (3) The British Industrial Biological Research Association unpublished rat study on vinyl chloride monomer administered in the drinking water for up to 152 weeks (the final report entitled "An Investigation Into the Carcinogenic Potential of Vinyl Chloride Monomer When Administered to Rats in the Drinking Water for Up to 152 Weeks," dated 1980); (4) CIVO Institute TNO second unpublished rat study on vinyl chloride monomer (the final report entitled "Lifespan Oral Carcinogenicity Study of Vinyl Chloride in Rats," dated September 1983).

The agency has determined that vinyl chloride monomer is a carcinogen via oral route of exposure on the basis of the results from these studies.

Elsewhere in this issue of the **Federal Register,** FDA is proposing to establish safe conditions of use for vinyl chloride polymers. FDA believes that vinyl chloride polymers can be regulated under the agency's carcinogenic impurities policy, which is described elsewhere in this document and in the accompanying notice of proposed rulemaking. FDA has used this policy to regulate food and color additives that contain carcinogenic impurities but which themselves have not been found to be carcinogenic.

The agency's proposed regulations published elsewhere in this issue of the **Federal Register** deal with the uses of vinyl chloride polymers including rigid and semirigid articles and the specific limitations that are needed to ensure their safe use.

E. Environmental Impact

18. One comment stated that, under the proposed regulations, products expected to substitute for vinyl chloride polymer products would have far greater environmental impacts than vinyl chloride polymer. In addition, the comment suggested that vinyl chloride polymer could be efficiently burned in properly designed and operated incinerators.

The agency's proposal, set forth elsewhere in this issue of the **Federal Register,** provides conditions for the safe use of regulated and prior-sanctioned vinyl chloride polymers. This proposed action is in contrast to the 1975 proposal, which would have prohibited certain uses of vinyl chloride polymers. FDA has prepared two documents, an environmental assessment and a finding of no significant impact, that evaluate the potential impact, both adverse and beneficial, expected from the increased use of vinyl chloride polymers. These documents consider the environmental factors addressed in the comment's submission. The environmental assessment and the finding of no significant impact may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

F. Economic Impact

19. One comment stated that the proposed regulations appeared to be more restrictive than necessary to assure protection of the public health from ingestion of vinyl chloride and discussed shortcomings and omissions in FDA's analysis of potential economic impact of the regulations. Another comment contained data concerning the economic impact the proposed regulations would have upon the firm.

FDA has considered these data and comments in preparing the economic assessment on the proposed regulations published elsewhere in this issue of the **Federal Register**. The economic assessment may be seen at the Dockets Management Branch (address above).

G. Conclusions

Since the publication of the September 1975 proposal, there have been significant scientific and legal developments that have caused FDA to reconsider its proposed regulations on the use of vinyl chloride polymers. Improvements in the manufacturing process have enabled vinyl chloride polymer manufacturers to lower greatly the levels of residual vinyl chloride monomer in the polymers. This development, along with procedures for risk assessment, now make it possible for the agency to establish safe conditions of use for vinyl chloride polymers. Details of the scientific and legal developments as well as the risk assessment are set forth in the notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

The agency has also developed a policy for providing for the safe use of food additives and color additives containing low levels of carcinogenic impurities. This policy was set forth in an advance notice of proposed rulemaking published in the **Federal Register** of April 2, 1982 (47 FR 14463). The use of this policy was upheld by the U.S. Court of Appeals in *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984), a case involving FDA's decision to list permanently the use of D&C Green No. 5. This color additive contains a carcinogenic impurity, but when the additive as a whole was tested in laboratory animals it did not induce cancer. This policy is explained in detail in that document (47 FR 14463).

Accordingly, FDA is withdrawing the proposal published in the **Federal Register** of September 3, 1975 (40 FR 40529). Published elsewhere in this issue of the **Federal Register** is a notice of proposed rulemaking that would authorize the safe use of regulated and prior-sanctioned vinyl chloride polymers.

This action is taken under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 402, 409, 701, 52 Stat. 1042, 1046–1047 as amended, 1049, 1055 (21 U.S.C. 321(s), 342, 348, 371)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Dated: January 27, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86–2236 Filed 1–31–86; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Parts 172, 175, 176, 177, 179, and 181

[Docket No. 84N–0334]

Proposed Uses of Vinyl Chloride Polymers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations to provide for the safe use of vinyl chloride polymers. The agency is proposing: (1) To provide for the safe use of certain vinyl chloride polymers by establishing limits on the amount of residual vinyl chloride monomer that they may contain; (2) to codify all known prior sanctions for vinyl chloride polymers; (3) to provide for the use of certain previously unregulated vinyl chloride polymers in manufacturing vinyl chloride bottles; and (4) to delete vinyl chloride-vinylidene chloride copolymers from the list of materials that may be used as coatings on fresh citrus fruits. Elsewhere in this issue of the **Federal Register**, FDA is withdrawing the proposal on vinyl chloride polymers that it published in the **Federal Register** of September 3, 1975 (40 FR 40529).

DATE: Comments by April 4, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION:

I. Introduction

The purpose of this proposal is to provide for the safe use of vinyl chloride polymers in contact with food.

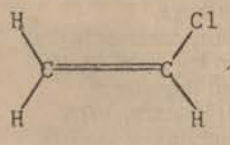
Vinyl chloride is a chemical with the formula C_2H_3Cl used as a monomer in the production of polymers. Other monomers are chemically bonded to this monomer by the process of polymerization to form larger, more complex molecules called "polymers." When all of the monomers that are polymerized together are molecules of the same substance, the resulting molecule is called a "homopolymer." The vinyl chloride homopolymer is sometimes called "polyvinyl chloride" (CAS Reg. No. 9002–86–2).

When molecules of different chemicals are polymerized together, the resulting molecule is called a "copolymer." Thus, when ethylene molecules are polymerized to vinyl chloride molecules, the resulting copolymer is called "ethylene vinylidene chloride."

Elsewhere in this issue of the **Federal Register**, FDA is withdrawing an earlier proposal on vinyl chloride polymers that it published on September 3, 1975. Responses to comments received on the September 3, 1975 proposal are set forth in the withdrawal document.

II. Regulatory History

Vinyl chloride (CAS Reg. No. 75–01–4) is a chemcial with the following structure:



; C_2H_3Cl, Molecular weight: 62.5

A wide variety of vinyl chloride polymers, including homopolymer and various copolymers, are available for use in the production of articles intended to contact food, including food-packaging materials, coatings, plastisols, gaskets, parts for food-processing equipment, flexible tubing, and waterpipe.

Under section 201(s) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s)), a substance is excluded from the definition of a "food additive" if its use was sanctioned by

FDA before September 6, 1958, the date of the enactment of the Food Additives Amendment. FDA issued several sanctions for uses of vinyl chloride polymers before that date. Those sanctions were in the form of letters, advisory opinions, and articles by FDA scientists that appeared in scientific journals. Although currently there is no list of the prior-sanctioned uses of vinyl chloride polymers in the Code of Federal Regulations, FDA is aware of such sanctions for their use as components of film for food wraps, as components of can enamels, and as components of certain types of rigid food-packaging materials, excluding bottles.

Since the enactment of the Food Additives Amendment in 1958, FDA has approved a variety of uses of vinyl chloride polymers in food-contact articles. The regulations codifying these approvals include: § 172.210 *Coatings on fresh citrus fruit* (formerly § 121.1179); § 175.105 *Adhesives* (formerly § 121.2520); § 175.300 *Resinous and polymeric coatings* (formerly § 121.2514); § 175.320 *Resinous and polymeric coating for polyolefin films* (formerly § 121.2569); § 176.170 *Component of paper and paperboard in contact with aqueous and fatty foods* (formerly § 121.2526); § 176.180 *Components of paper and paperboard in contact with dry food* (formerly § 121.2571); § 177.1010 *Acrylic and modified acrylic plastics, semirigid and rigid* (formerly § 121.2591); § 177.1200 *Cellophane* (formerly § 121.2507); § 177.1210 *Closures with sealing gaskets for food containers* (formerly § 121.2550); § 177.1630 *Polyethylene phthalate polymers* (formerly § 121.2524); § 177.1850 *Textryls* (formerly § 121.2545); § 177.1950 *Vinyl chloride-ethylene copolymers* (formerly § 121.2609); § 177.1960 *Vinyl chloride-hexene–1 copolymers* (formerly § 121.2623); § 177.1970 *Vinyl chloride-lauryl; vinyl either copolymers* (formerly § 121.2608); § 177.1980 *Vinyl chloride-propylene copolymers* (formerly § 121.2521); § 177.2250 *Microporous polymeric filters* (formerly § 121.2631); and § 179.45 *Packaging materials used during the irradiation of packaged foods* (formerly § 121.2543). The renumbering of these sections occurred as part of a recodification that FDA announced in the **Federal Register** of March 15, 1977 (42 FR 14302).

On January 4, 1973, representatives of Schenley Distillers met with FDA to report the results of analyses that showed that alcoholic beverages stored in vinyl chloride polymer bottles for periods of up to 9 months had levels of vinyl chloride monomer as high as 20 parts per million (ppm). Other components of the bottles that gave gin and vodka an off-flavor were also extracted, but these components were not identified. By May 10, 1973, FDA chemists had confirmed that vinyl chloride monomer was present in vinyl chloride polymer liquor bottles, and that it migrated into the liquor.

As a result of these findings, FDA published a notice of proposed rulemaking in the **Federal Register** of May 17, 1973 (38 FR 12931), to restrict the use of vinyl chloride polymer resins to food-packaging materials that were used with nonalcoholic foods.

By March 1974, the agency had received information from various sources suggesting that the migration of vinyl chloride monomer from vinyl chloride polymer resins was not limited to situations in which the polymer was used in food-contact articles for alcoholic beverages. By this time, vinyl chloride monomer had been linked to liver cancer in humans. Therefore, in the **Federal Register** of April 22, 1974 (39 FR 14215), FDA proposed to ban vinyl chloride as an aerosol propellant in drug and cosmetic preparations and also requested data from industry about the use of vinyl chloride polymers, the residual concentration of vinyl chloride monomer in vinyl chloride polymers, and the migration of vinyl chloride monomer from vinyl chloride polymer containers.

In the **Federal Register** of August 26, 1974 (39 FR 30830), the agency issued a final rule that prohibited the use of vinyl chloride as a propellant in aerosol cosmetic products and that required that a manufacturer obtain an approved new drug application before using vinyl chloride as a propellant in aerosol drug products. This action was based on evidence that inhalation of high concentrations of vinyl chloride resulted in acute toxicity that was manifested by an array of symptoms, including unconsciousness, cardiac effects, bone changes, and degenerative changes in the brain, liver, and kidneys.

As a result of the many comments that the agency received on the April 22, 1974 proposal, in the **Federal Register** of September 3, 1975 (40 FR 40529), FDA proposed further restrictions on the use of vinyl chloride polymers in contact with food.

Under the September 1975 proposal, rigid and semirigid vinyl chloride polymers would have been banned from food-contact use because of possibly unsafe levels of vinyl chloride monomer migration, although continued use of vinyl chloride polymer waterpipe would have been permitted under the an interim regulation.

The September 1975 proposal cited inhalation studies by Dr. Cesare Maltoni, who reported the development of angiosarcomas of the liver along with other types of tumors at levels of atmospheric exposure as low as 250 ppm ("Carcinogenicity Biossay of Vinyl Chloride," *Environmental Research*, 7:387–045, 1974). Since then, vinyl chloride has been shown to be an animal carcinogen both by inhalation and by oral administration and a human carcinogen by inhalation, as discussed below (IARC Monographs, 19:409–412, 1979).

Data Received in Response to Proposal

As a result of the September 3, 1975 proposal, FDA received numerous comments, which are addressed elsewhere in this issue of the **Federal Register**, and considerable analytical manufacturing and toxicological data bearing on the reduction in the level of vinyl chloride monomer in vinyl chloride polymers. These data led FDA to publish this new proposal on vinyl chloride polymers.

Data submitted by industry in response to the September 1975 proposal showed that manufacturers had succeeded in reducing the vinyl chloride monomer levels in vinyl chloride polymer resin. Before 1975, residual vinyl chloride monomer levels of 1,000 ppm were common. Since then, improved manufacturing procedures have lowered the residual vinyl chloride monomer levels by more than five orders of magnitude.

Although methods for reducing vinyl chloride monomer levels have varied from company to company, such methods generally have involved application of heat and vacuum during processing of the resin. Manufacturers have also taken steps to produce small, porous resin particles, which have facilitated diffusion of the monomer out of the resin.

Substantiation of the reduction in vinyl chloride monomer has been provided by reports of residual vinyl chloride monomer levels of 10 ppb in vinyl chloride polymer bottles (The Society of the Plastics Industry, Inc., November 12, 1982) and an estimated 100 parts per trillion in can coatings (Union Carbide Co., December 12, 1980).

The Society of the Plastics Industry, Inc. (SPI), in a submission (November 12, 1982) on behalf of the vinyl chloride polymer manufacturers, informed the agency "that with respect to vinyl chloride polymer bottles, the industry can provide products with residual

monomer levels not exceeding 10 ppb by weight." The SPI submission further stated "the quantity of vinly chloride available to migrate is so low, and the rate of migration of vinyl chloride from vinyl chloride polymer containers made with a residual [vinyl chloride monomer] content of 10 ppb or less is so slow that the concentration of vinyl chloride in the contents even after an exaggerated shelf-life exposure at moderately elevated temperatures will not exceed the safe (0.073 ppb) level."

To monitor the level of residual vinyl chloride monomer in vinyl chloride polymers, the agency has developed a sensitive gas chromatographic method titled "Head Space Sampling and Gas-Solid Chromatographic Determination and Confirmation of >1 ppb Vinyl Chloride Residues in Polyvinyl Chloride Food Packaging" (J.L. Dennison, et al., *Journal of the Association of Official Analytical Chemists*, 61:813–819, 1978). This analytical method has been tested by FDA and by at least one major manufacturer of vinyl chloride polymers and has been found to yield satisfactory analytical results. However, the method has not been tested with all possible vinyl chloride-based food-contact articles. FDA invites comments on the applicability of this analytical method and will consider any comments received in developing a final rule.

III. The Use of Vinyl Chloride Polymers in Food-Contact Articles Will Result in Their Becoming Components of Food

Section 201(s) of the act defines a "food additive" as "any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use) * * *" (21 U.S.C. 321(s)).

FDA finds that vinyl chloride polymers used in food-contact articles meet this definition. Existing theory, supported with data produced by industy and by FDA laboratories, demonstrates that, under normal conditions of use, vinyl chloride monomer will migrate to food from all types of vinyl chloride polymer food-contact articles.

The migration of vinyl chloride monomer from vinyl chloride polymers can be described by Fick's First and Second Laws of Diffusion, first enunciated in 1855 (Crank, J., "The Mathematics of Diffusion," 2d Ed., pp. 2–4, Oxford Press, London, 1976). The differential equations expressing these laws contain a variable called diffusivity. The form of the differential equations derived from Fick's laws depends on the boundary conditions, i.e., monomer concentration inside and outside the bottle wall, and on the conditions existing at the time of initiation of diffusion of vinyl chloride monomer, such as the intitial residual monomer concentation.

When applied to the particular situation of monomer migration from a bottle, such as vinyl chloride monomer from a vinyl chloride polymer bottle, the diffusion equations derived from Fick's Second Law always predict a finite migration of the monomer based on initial monomer concentration in the bottle wall, provided diffusivity is not zero. Only if diffusivity is zero would no migration be likely.

Based on its review of published experimental results and of theoretical calculations based on numberous systems, FDA believes that the diffusivity of vinyl chloride monomer in vinyl chloride polymer will always be greater than zero, and that migration will occur whenever residual vinyl chloride monomer if present in the polymer.

In a series of reports dating from January 17, 1975, Ethyl Corp. proposed and utilized a diffusion model that it has derived from Fick's Second Law. This model can be used to predict monomer levels in various food simulants when the initial residual vinyl chloride monomer concentration in the bottle wall and the diffusivity are known.

Ethyl Corp. originally applied this diffusion model to extraction data derived from bottles containing residual vinyl chloride monomer at levels of from 80 to 330 parts per million (ppm). This model accurately predicted the level of monomer that migrated into food simulating solvents.

FDA also has used sensitive analytical methods to measure the levels of vinyl chloride monomer in extracts from vinyl chloride polymers. those methods have shown that, consistent with Ethyl's model, the levels of monomer in the extract could be related to the intitial residual concentration of the monomer in the polymer. For example, FDA conducted a migration study on two lots of unplasticized polymer sheet. One lot contained 0.44 ppm residual vinyl chloride monomer and the other 0.28 ppm. Samples from each lot were extracted with 50 percent ethanol for 19 days at 49 °C (120 °F). Vinyl chloride monomer levels in the extract from the polymer containing 0.44 ppm averaged 2.4 ppb, while vinyl chloride monomer levels in the extract from the 0.28 ppm sheet averaged 1.6 ppb (Diachenko, et al., *Journal of the Association of Official Analytical Chemists*, 60:570–575, 1977).

The Ethyl predicts that there will be migration, albeit below the limits of detection by current analytical techniques, from vinyl chloride polymers that contain vinyl chloride monomer at the level of less than one ppm. According to the model, as migrant concentration in a polymer is reduced, the contribution to diffusion from the interaction among migrants also decreases. In the limiting case of a single migrant molecule, the only interaction that will occur is between the migrating monomer and the polymer. Even though diffusivity will be reduced to a finite constant in this case, it will not become zero. Thus, even when the polymer contains the monomer at very low levels, the presence of the vinyl chloride monomer in food "* * * can be predicted on the basis of a meaningful projection from reliable data." See *Monsanto Co.* v. *Kennedy*, 613 F.2d 947, 955 (D.C. Cir. 1979).

Therefore, based on the evidence before it, FDA concludes that vinyl chloride polymer will become a component of food, and that the extent to which this will be the case depends, at least in part, on the amount of monomer in the polymer. Given these facts and the fact that vinyl chloride monomer has been shown to be a carcinogen, FDA has decided to regulate the use of vinyl chloride polymers under the act (21 U.S.C. 348) to ensure that the polymer that is marketed does not contain unsafe levels of the monomer.

IV. Carcinogenic Impurities Approach to Safety Evaluation

A. Applicable Legal Standards

FDA, in its evaluation of the safety of vinyl chloride polymers, reviewed, as it does with all indirect food additives, the safety of both the polymer and its possible impurities (e.g., starting materials used to manufacture the additive). As stated above, the polymer is likely to contain residual amounts of a carcinogenic compound, vinyl chloride monomer, that is used in the manufacture of the polymer. The level of residual monomer in polymers is an important factor in assessing safety.

Under section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the Food Additives Amendment, a food additive cannot be approved for a particular use unless the data presented to FDA establish that the food additive is safe

for that use. The concept of safety embodied in this requirement was explained in the legislative history of the Food Additives Amendment of 1958. "Safety requires proof of a reasonable certainty that no harm will result from a proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." H. Rept. 2284, 85th Cong., 2d Sess. 1 (1958). This definition of safety is incorporated in FDA's food additive regulations (21 CFR 170.3(i)). The Delaney anticancer clause of the Food Additives Amendment of 1958 (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A)) provides further that no food additive can be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA often refused to list a food or color additive that contained or was expected to contain minor amounts of a carcinogenic chemical, even if the additive as a whole had not been shown to cause cancer. As explained below, however, scientific developments and experience with risk assessment procedures have made it possible for FDA, in appropriate circumstances, to approve the use of additives that contain a carcinogenic chemical.

In the preamble to the final rule permanently listing D&C Green No. 6 published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic constituent. Since that decision, FDA has listed, on the same basis, the uses of several color additives that contain carcinogenic impurities, including the use of D&C Green No. 6 for coloring contact lenses (48 FR 13020; March 29, 1983) and the use of D&C Green No. 5 (47 FR 24278; June 4, 1982) and of D&C Red No. 6 and D&C Red No. 7 (47 FR 57681; December 28, 1982) for coloring drugs and cosmetics. (See also the advance notice of proposed rulemaking published in the **Federal Register** of April 2, 1982 (47 FR 14462).)

The appropriateness of FDA's decision to list the uses of these color additives is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has not itself been shown to cause cancer. Relying heavily on the reasoning in the agency's decision, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

The Delaney or anti-cancer clause is not triggered unless the additive as a whole is found to induce cancer. An additive that has not been shown to induce cancer but that contains a carcinogenic impurity is properly evaluated under the general safety clause of the statute, using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

Therefore, because vinyl chloride polymers, manufactured from the component vinyl chloride monomer, have not been shown to cause cancer, the anticancer clause does not apply. FDA has evaluated the safety of this additive under the general safety clause, using risk assessment procedures to estimate the upper bound limit of risk presented by the carcinogenic chemical that may be present as an impurity in the additive. This discussion is presented below.

B. Carcinogenicity Data on Vinyl Chloride Monomer

FDA, since the early 1970's, has been monitoring ongoing animal studies that have investigated the toxicity of vinyl chloride monomer. The agency has reviewed four available oral carcinogenicity studies on vinyl chloride monomer. These four studies are: (1) Cesare Maltoni's vinyl chloride monomer carcinogenicity study (Environmental Health Perspectives, 41:3–29, 1981), (2) the chronic oral study performed by Feron et al. (*Food and Cosmetic Toxicology*, 19:317–333, 1981), (3) The British Industrial Biological Research Association (BIBRA), unpublished study (1980) entitled "An Investigation into the Carcinogenic Potential of Vinyl Chloride Monomer when Administered to Rats in the Drinking Water for up to 152 weeks," and (4) CIVO Institute's TNO unpublished study (1983) entitled "Lifespan Oral Carcinogenicity Study of Vinyl Chloride in Rats."

In the Feron et al. study, Wistar rats were fed a diet containing vinyl chloride monomer in vinyl chloride homopolymer powder or were administered vinyl chloride monomer in soybean oil by gavage. The results of this study show that vinyl chloride monomer is a carcinogen in Wistar rats, inducing neoplastic liver cell nodules, hepatocellular carcinomas, and angiosarcomas of the liver and the lung. The agency chose this study for computation of the risk for human exposure to vinyl chloride monomer because it was a lifetime (135 to 144 weeks) feeding study, and because the individual animal data were available.

In the Maltoni study vinyl chloride monomer was administered by various routes (including oral gavage), doses, and schedules of treatment, to animals of various species, strains, sex, and age. For the oral portion of the study, Sprague-Dawley rats were administered vinyl chloride monomer in olive oil by gavage for 52 weeks (5 times/week) and kept until spontaneous death (136 weeks). The report contains few details on the experimental design. However, the results of the oral portion of this study suggest that vinyl chloride monomer is an animal carcinogen. The results have not been used for the agency's risk assessment because the treatment lasted only 52 weeks. The data from this experiment were also presented by Maltoni at "The Conference to Re-evaluate the Toxicology of Vinyl Chloride Monomer, Polyvinyl Chloride and Structural Analogues" held at the National Institutes of Health, Bethesda, MD, March 20 and 21, 1980, and were published in *Environmental Health Perspectives*, 41:3–29, 1981.

In the BIBRA study, Wistar rats were administered vinyl chloride monomer as solutions in the drinking water for up to 152 weeks. The results show that vinyl chloride monomer is carcinogenic to Wistar rats, inducing predominantly hepatic hemangiosarcomas.

The latest CIVO Institutes TNO study (1983) is actually a repeated study of Feron et al. (1981), but at lower test levels of vinyl chloride monomer. The earlier study (Feron et al., 1981) had shown that liver neoplasia were found to occur at all dose levels. Therefore, in order to provide ideal experimental data for risk extrapolation, a similar life-span oral carcinogenicity study with vinyl chloride monomer in Wistar rats was carried out at lower dose levels at the same laboratory. The results of this study essentially confirmed the results observed in the earlier study in that vinyl chloride monomer, at the lower doses, induced only hepatocellular tumors (neoplastic nodules and hepatocellular carcinomas).

Upon reviewing the results of these studies, the agency concluded that vinyl chloride monomer is an animal liver carcinogen via the oral route of exposure.

An extensive review of the toxicological effects of vinyl chloride monomer has also been presented in International Agency for Research on Cancer (IARC) monograph No. 19 (published February 1979), which was prepared by an IARC evaluation group that met in February 1978. The evaluation group concluded that vinyl

chloride monomer is a carcinogen in animals (both via inhalation and oral routes) and in humans (inhalation). It found that vinyl chloride monomer is carcinogenic by the inhalation route to mice, rats, rabbits, hamsters, and humans. The evaluation group also found that the monomer produces tumors at multiple sites but is most active in induction of the otherwise rare hepatic angiosarcomas.

IARC summarized the data on vinyl chloride monomer as follows (IARC Monographs, Supplement 1, p. 45, 1979):

A. Evidence for Carcinogenicity to Humans (Sufficient)

Vinyl chloride causes angiosarcomas of the liver; it has also been associated with tumors of the brain and lung and of the haematopoietic and lymphatic systems in humans. Reports of increased incidence of tumors of the digestive system, urinary tract, and breast (in women) are inadequate to evaluate the carcinogenicity of vinyl chloride for these sites.

B. Evidence of Carcinogenicity to Animals (Sufficient)

Vinyl chloride is carcinogenic to mice, rats, and hamsters after its administration orally or by inhalation, producing tumors at several sites, including angiosarcomas of the liver.

C. Evidence for Activity in Short Term Tests (Sufficient)

Vinyl chloride induces DNA damage in prokaryotes and in mammalian cells *in vitro*. It was mutagenic to *Salmonella typhimurium* in the absence of an exogenous metabolic activation system and to *Escherichia coli*, *Schizosaccharomyces pombe* and *Saccharomyces cerevisiae* but not to *Neurospora crassa*. It was mutagenic to *Drosophila melanogaster*, inducting sex-linked recessive lethal mutations and to hamster cells *in vitro*. It induced chromosomal aberrations and sister chromatid exchanges in Chinese hamsters exposed *in vivo*. It did not induce dominant lethal or somatic mutations in mice. Vinyl chloride alkylated the liver DNA of rats treated *in vivo*. Chromosomal aberrations and sister chromatid exchanges were induced in workers exposed to vinyl chloride. Most such data were obtained when exposure was to levels of 25 ppm. In follow-up studies, in which workers were exposed to levels that had been reduced to 15 ppm or lower, no aberrations or sister chromatid exchanges were reported. Sister chromatid exchange incidence dropped to a normal level shortly after termination of exposure to higher levels. However, the incidence of chromosomal aberrations returned to normal only after two years. [Thus, although sister chromatid exchanges were not observed in some studies, sampling may have occurred after the level returned to normal.]

The 1979 monograph concluded that, while vinyl chloride monomer is an established animal carcinogen via both inhalation and oral ingestion, its carcinogenic activity in humans has so far been demonstrated only in workers who were involved in the production, polymerization, and processing industries and who were exposed to high environmental concentrations of vinyl chloride monomer vapor. Based on its own review of the data, FDA concurs with this conclusion.

C. Risk Assessment

In assessing the risk presented by vinyl chloride monomer from the use of vinyl chloride polymers, the agency has used risk assessment procedures that are similar to those that it used in evaluating the risk from the minor carcinogenic impurities that may be present in the color additives that FDA discussed above.

The risk evaluation of the carcinogenic constituent has two aspects: (1) Assessment of the probable exposure to the constituent (vinyl chloride monomer) from all the regulated and prior-sanctioned uses of vinyl chloride polymers, and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

1. Exposure

The agency has calculated an estimated daily intake for vinyl chloride monomer from known current uses of vinyl chloride polymers as potential well as additional uses taking into account the fraction of the daily diet that might be packaged in materials made of vinyl chloride polymers. Vinyl chloride monomer exposure may be estimated using known vinyl chloride monomer residuals in the vinyl chloride homopolymer or copolymer and survey data for current production levels for these polymers.

The estimated daily intake calculations for vinyl chloride polymers are as follows:

1. *Liquor bottles.* Because this use of vinyl chloride polymers is not permitted by current regulations or by a prior sanction, there are no available marketing data from which the agency might estimate potential vinyl chloride monomer exposure from vinyl chloride polymer liquor bottles. There are several ways of estimating exposure to vinyl chloride monomer from use of these liquor bottles, each using the conservative assumption that all liquor will be packaged in these bottles. In reality, vinyl chloride polymers will compete with other materials such as polyethylene terephthalate and glass, which are currently used for packaging liquor.

A typical vinyl chloride ploymer liquor bottle will weigh approximately 105 grams and have a capacity of 1.75 liters (letter dated August 17, 1983, from The Society of the Plastics Industry, Inc.). If the vinyl chloride monomer residual level is 10 ppb, the proposed limitation in § 177.1975, and if 100 percent migration occurs, the predicted vinyl chloride monomer level in the beverage would be 0.65 ppb. The resulting vinyl chloride monomer levels in the liquor would be below the detection limits of current analytical methods.

The actual migration expected over the shelf life of liquor is likely to be lower based on experimental migration levels from containers having higher residual monomer levels. For example, when bottles containing 0.9 ppm residual vinyl chloride monomer were extracted with 50 percent ethanol for 9 months at 72° F, no vinyl chloride monomer could be detected in the solvent at a level of detection of 10 ppb (Ethyl Corp., report dated September 27, 1976). Therefore, if it is assumed that migration occurs at the level of detection, 5.5 percent of the residual vinyl chloride monomer migrated. Because diffusivity has been shown by Ethyl's work to decrease as the residual vinyl chloride monomer is reduced, the percent migration must also decrease. Therefore, 5.5 percent migration of residual vinyl chloride monomer from bottles containing 10 ppb vinyl chloride monomer is an upper limit. If 5.5 percent of the available vinyl chloride monomer migrates from a 1.75-liter bottle having 10 ppb residual vinyl chloride monomer, the predicted level of vinyl chloride monomer in the packaged food would be 0.036 ppb.

According to available statistics ("Public Revenues from Alcoholic Beverages," p. 26, 1980/1981, Economics and Statistics Division, Distilled Spirits Council of the United States, Inc.), per capita liquor consumption in 1980 was 1.98 gallons or about 19 grams per day. The average vinyl chloride monomer ingested per person per day from this use would be about 0.68 nanogram per day if vinyl chloride monomer migration is 0.036 ppb.

Exposure may also be estimated using the U.S. Department of Agriculture (USDA) Nationwide Food Consumption Survey, 1977–1978. Of the 37,874 individuals surveyed, those who consumed liquor at least once during the 3-day study period consumed an average of 46 grams per day. The 90th percentile intake for users was 98 grams per day. If this latter value is used, vinyl chloride monomer exposure becomes 3.5 nanograms per day. This number is conservative because users who consume liquor less frequently than

once in 3 days were not included in the survey. The 1977–1978 Market Research Corp. of America (MRCA) survey of food consumed over a 14-day period reports an upper 90th percentile level of only 28 grams per day for brandy, whiskey, rum, and vodka.

2. *Wine bottles.* According to the Distilled Spirits Council of the United States, Inc., 1980 consumption of wine was approximately the same as that of liquor. However, the 90th percentile users' intake reported by USDA is 232 grams per day (USDA Nationwide Food Consumption Survey, 1977–1978). If all this wine contained vinyl chloride monomer at a level of 0.036 ppb (based on the Ethyl Corp. 50 percent ethanol extraction experiments referred to above), ingestion of vinyl chloride monomer would be 8.4 nanograms per day. This number is even more conservative than that calculated for liquor because water does not extract vinyl chloride monomer as well as alcohol, and migration into a beverage containing 14 percent or less alcohol should be lower than migration into beverages containing 50 percent alcohol. Furthermore, as with liquor, the assumption that all wine will be packaged in vinyl chloride polymer bottles is highly conservative. (The corresponding MRCA 14-day survey gives a level of 78 grams per day for the 90th percentile user.)

3. *Oil bottles.* There are vinyl chloride polymer vegetable oil bottles on the market and, although the number of these bottles is small, there are indications that the number will increase. In contrast to the consumption pattern for liquor and wine, fats and oils are consumed by almost the entire population. In 1978, salad and cooking oil consumption (including oils used in commercial salad dressings) averaged 22.6 pounds per person per year ("Fats and Oils Situation," USDA, May 1980) or 28 grams per day per capita. For food items with broad consumption patterns, the 90th percentile users' intake is generally about two times the per capita intake and yields an estimated 56 grams per day for 90th percentile users of salad and cooking oil. (The MRCA 90th percentile level for retail salad and cooking oils is a much lower 5.2 grams per day.)

Experimental results demonstrate that the migration rate of vinyl chloride monomer from a rigid vinyl chloride polymer bottle into a vegetable oil approximates the migration rate into 50 percent alcohol. (See, e.g., extraction results reported by Ethyl Corp. in the April 1975 issue of "Modern Packaging.") From information supplied by The Society of the Plastics Industry, Inc., a typical oil bottle contains 38 ounces of oil and weighs 70 grams. Assuming a migration rate for oil that is identical to that for 50 percent alcohol, the estimated 90th percentile user intake is 2.5 nanograms per day.

4. *Vinyl chloride homopolymer film.* Vinyl chloride monomer levels in plasticized vinyl chloride homopolymer film are lower than those found in rigid vinyl chloride polymer. An upper limit of exposure to vinyl chloride monomer from the film can be obtained by assuming that all of the vinyl chloride monomer in the film migrates into food. For example, a film with a thickness of 1 mil (0.0025 centimeter), a density of 1.26 grams per cubic centimeter, and a vinyl chloride monomer residual of 5 ppb would yield a maximum level in food of 0.010 ppb, if 1 square inch of film contacts 10 grams of food—FDA's usual assumption. Analyses of plasticized film for vinyl chloride monomer have generally shown residual vinyl chloride monomer levels of less than 5 ppb (Dennison, et al., *Journal of the Association of Official Analytical Chemists*, 61:4:813–819, 1978). The assumption of 100 percent migration is likely to be an exaggeration even for use with fatty foods such as meat and poultry, which would extract vinyl chloride monomer to a greater extent than other nonalcoholic foods.

Currently, food packaged in plasticized film is estimated to be about 5 percent of the diet. Industry projections indicate that this percentage may rise to about 7.5 percent in 5 years. FDA used the latter value in computing its estimates.

Considering migration, fraction of the diet packaged in film (7.5 percent), and a total dietary intake of 3,000 grams per day, FDA estimates exposure to vinyl chloride monomer from the use of vinyl chloride homopolymer film to be 2.2 nanograms per day ("Guidelines for Estimating Exposure to Indirect Food Additives," FDA, June 1981).

5. *Vinyl chloride-vinylidene chloride copolymers*—(i) *Films.* Although the use of this type of film with food is more limited than the use of vinyl chloride homopolymer films, residual vinyl chloride monomer levels are higher than those encountered in vinyl chloride homopolymer films. If the vinyl chloride monomer residual is 50 ppb, a level that FDA believes is the lowest level achievable with current technology, a calculation similar to that for homopolymer film yields a level of 0.14 ppb in food from 100 percent migration.

Information submitted by industry indicates that 1.5 percent to 2.8 percent of the total daily diet is packaged in vinylidene chloride-vinyl chloride copolymers. Using the maximum value of 2.8 percent, the migration level of 0.14 ppb, and a total dietary intake of 3,000 grams per day, FDA calculates exposure to vinyl chloride monomer from this use to be 12 nanograms per day.

(ii) *Vinyl chloride-vinylidene copolymer coatings on fresh citrus fruit.* Based on information from a major producer of vinyl chloride-vinylidene chloride copolymer (memorandum of telephone conversation, M. Flood, FDA, and J. Cobler, Dow Chemical Co., September 30 and October 3, 1983), FDA has determined that this copolymer is no longer used as a coating on fresh citrus fruit. Therefore, the agency is proposing to revoke the regulation permitting this use and is not including any contribution of vinyl chloride monomer from this use in its calculation of the estimated daily intake.

6. *Other uses.* FDA has only included the primary probable contributors in estimating the daily intake of vinyl chloride monomer. It has not included other food-contact uses of vinyl chloride homopolymers and copolymers because they contribute such a small amount of vinyl chloride monomer to the diet that, in view of the conservatisms used in estimating exposure from the primary contributors, they can be disregarded. An example of these uses includes vinyl chloride copolymers used as coatings, where heat treatment of the coating after application would reduce vinyl choride monomer in the coating to levels not measurable by current analytical technology. Additionally, uses of vinyl chloride in articles such as water pipe or filters can be disregarded. These articles have a long service life, come into contact with extremely large amounts of water and other food, and will contain small amounts of vinyl chloride monomer. Therefore, FDA believes that these uses will not contribute any measurable amounts of vinyl chloride monomer when used in accordance with the proposed regulations.

To obtain an estimate of the upper limit vinyl chloride monomer exposure from all food-contact uses of vinyl chloride polymers, FDA has summed the upper limit exposures from each of the primary contributors to the exposure. FDA considers it unlikely that a high user of vinyl chloride polymer food-contact products would be exposed at maximum levels of vinyl chloride monomer from each use. Because it is most unlikely that a 90th percentile wine consumer is also a 90th percentile liquor consumer, particularly on a lifetime basis, these two exposure estimates are

not added together. Instead, FDA is using the higher value for wine in the vinyl chloride monomer cumulative calculation. FDA conservatively estimates that the lifetime-averaged individual exposure to vinyl chloride monomer from the probable food-contact use of vinyl chloride polymers will not exceed 25 nonograms per day.

2. Extrapolation of Risk

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose in the animal experiment to the very low doses of possible human exposure. This procedure is not likely to underestimate the actual risk from very low doses. In fact, the estimate of the risk is most likely exaggerated because the extrapolation models used are designed to estimate the maximum possible risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the use of vinyl chloride polymers.

FDA has used data from a carcinogenicity bioassay in which vinyl chloride monomer was administered in the diet of rats to estimate the upper level of human risk from exposure to this impurity from the proposed use of vinyl chloride polymers (Feron et al. study and memorandum dated May 27, 1984, from Cancer Assessment Committee to V. Anand, FDA).

FDA has calculated that the individual lifetime risk of cancer from exposure to vinyl chloride monomer at 25 nanograms per day is less than 1 in 10 million. Because of numerous conservatisms in the exposure estimate, lifetime-averaged individual exposure is expected to be substantially less than 25 nanograms per day. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to vinyl chloride monomer that may result from the use of vinyl chloride polymers in food packaging complying with the vinyl chloride monomer limitations set forth in this document.

These limitations on residual vinyl chloride monomer are necessary to ensure that the present and future exposure to vinyl chloride monomer in the daily diet remains within the limits used to conclude that vinyl chloride polymers may be used safely.

V. Prior sanctions

The agency is proposing to establish a listing of all known prior sanctions for the use of vinyl chloride polymers in packaging materials. These prior sanctions include those listed in the 1975 proposal, as well as additional prior sanctions discovered since publication of that proposal.

As discussed above, the use of a substance is excluded from the definition of "food additive" in section 201(s) of the act if that use is in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment. Section 181.5 of FDA's regulations (21 CFR 181.5) provides that a prior sanction exists only for specific uses of a substance; i.e., at the levels required for the technical effects and in the food categories for which there is explicit approval. As a result, some uses of a substance may be food additive uses while other uses may be prior sanctioned. Indeed, FDA regulations list uses of a number of substances, including vinyl chloride polymers, in each category.

The 1975 proposal listed several prior-sanctioned uses of vinyl chloride polymers and requested that firms holding other valid prior sanctions for these polymers forward them to FDA for inclusion in the final regulation. There were no submissions in response to that request.

Subsequently, FDA reviewed its files on all firms that were known to be manufacturing vinyl chloride polymers for use in food-contact articles before the effective date of the Food Additives Amendment to the act. This review revealed the following additional prior sanctions:

1. Letter to Firestone Plastics Co., Pottstown, PA, dated April 20, 1951, permitting the use of vinyl chloride resins as films for food packaging.

2. Letter to Firestone Plastics Co., Pottstown, PA, dated October 5, 1956. Permitting the use of rigid polyvinyl chloride (homopolymer) sheet for packaging poultry.

3. Letter to Firestone Plastics Co., Pottstown, PA, dated February 21, 1957, permitting the use of vinyl chloride and vinyl chloride-acetate resins for "food wrapping purposes."

4. Letter to Borden Co., Santa Barabara, CA, dated August 15, 1957. Permitting the use of vinyl chloride polymers as tubing for food-contact use.

FDA is proposing to establish § 181.37 to cover those uses of these vinyl chloride polymers for which documentation of the prior sanctions is available. FDA's review of its files for all known pre-1958 manufacturers failed to locate any documentation of a prior sanction for a rigid or semirigid vinyl chloride polymer bottle. The only documented prior sanctions for rigid vinyl chloride polymer that the agency found were for waterpipe and poultry packaging trays.

V. Proposed Regulations

A. Currently Regulated Polymers

In order to provide for the safe use of vinyl chloride polymers currently regulated under Title 21 of the Code of Federal Regulations, FDA is proposing the following:

1. In § 172.210 *Coatings on fresh citrus fruit*, FDA is proposing to delete the use of vinyl chloride-vinylidene chloride copolymer, and the adjuvants used in its production, as components of coatings on fresh citrus fruit. The only known manufacturer of this copolymer reported to FDA that the material has not been used to coat fresh citrus fruit for many years, and that there are no plans to market the product for this use in the future. Deletion of the additive vinyl chloride-vinylidene chloride copolymer in this regulatoin will also result in the deletion of polyethylene glycol, polyvinyl-pyrrolidone, potassium persulfate, propylene glycol alginate, and sodium decylbenzene sulfonate from § 172.210, because the only use of these adjuvants permitted by this regulation is in vinyl chloride-vinylidene chloride coplymers. The deletion of these adjuvants has no effect on their status in other food additive regulations.

2. In § 175.105 *Adhesives*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 5 ppb by weight of the vinyl chloride homo- or copolymer component of the adhesive.

3. In § 175.300 *Resinous and polymeric coatings*, for the vinyl chloride homo- or copolymer component of the coatings, FDA is proposing to establish a limit on residual vinyl chloride monomer of 5 ppb by weight.

4. § 175.320 *Resinous and polymeric coatings for polyolefin films*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 5 ppb by weight of the vinyl chloride copolymer component of the olefin polymer coating.

5. § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 5 ppb by weight of the listed vinyl chloride copolymer components of the paper and paperboard.

6. In § 176.180 *Components of paper and paperboard in contact with dry foods*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 5 ppb by weight of the vinyl chloride homo- or copolymer component.

7. In § 177.1010 *Acrylic and modified acrylic plastics, semirigid and rigid*, FDA is proposing to establish a limit on residuel vinyl chloride monomer of 5

ppb by weight of the vinyl chloride copolymer component.

8. In § 177.1200 *Cellophane*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 5 ppb by weight of the vinyl chloride homo- or copolymer components.

9. In § 177.1210 *Closures with sealing gaskets for food containers*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 5 ppb by weight of the vinyl chloride copolymer component.

10. In § 177.1630 *Polyethylene phthalate polymers*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 5 ppb by weight of the vinyl chloride copolymer component.

11. In § 177.1850 *Textryls*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 5 ppb by weight of the vinyl chloride copolymer component.

12. In § 177.1950 *Vinyl chloride-ethylene copolymers*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 10 ppb by weight of the vinyl chloride copolymer component.

13. In § 177.1960 *Vinyl chloride-hexene-1 copolymers*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 10 ppb by weight of the vinyl chloride copolymer component.

14. In § 177.1970 *Vinyl chloride-lauryl vinyl ether copolymers*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 10 ppb by weight of the vinyl chloride copolymer component.

15. In § 177.1980 *Vinyl chloride-propylene copolymers*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 10 ppb by weight of the vinyl chloride copolymer component.

16. In § 177.2250 *Filters, microporous polymeric*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 50 ppb by weight of the vinyl chloride homo- or copolymer component.

17. In § 179.45 *Packaging materials for use during the irradiation of prepackaged foods*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 5 ppb by weight of the vinyl chloride copolymer component.

B. Polymers Not Previously Regulated

In Part 177, FDA is also proposing to establish new § 177.1975 *Vinyl chloride polymer resins, rigid and semirigid*, to provide for the safe use of rigid and semirigid vinyl chloride polymers that have been marketed based on the belief that they are covered for food use by a valid prior sanction. This regulation provides for the use of those vinyl chloride polymers that are not covered by a valid prior sanction or by existing regulations.

This regulation proposes various specifications, including a residual vinyl chloride monomer limit of 10 ppb by weight of the vinyl chloride polymer.

C. Prior-sanctioned Polymers

FDA is proposing new § 181.37 *Vinyl chloride homo- and copolymer resins*, which sets forth all known prior sanctions for vinyl chloride homo- and copolymers and sets forth limits on residual vinyl chloride monomer in these polymers based on what FDA has determined the manufactuers are capable of achieving. The specific proposed limits, expressed by weight of the vinyl chloride homo- or copolymer component, are as follows:

1. In vinyl chloride homo- or copolymer films and coatings, except as noted below, FDA proposes to limit residual vinyl chloride monomer to 5 ppb by weight of the vinyl chloride homo- or copolymer component.

2. In vinyl chloride-vinylidene chloride films, FDA proposes to limit residual vinyl chloride monomer to 50 ppb by weight of the vinyl chloride copolymer component.

3. In vinyl chloride polymer waterpipe, FDA proposes to limit residual vinyl chloride monomer to 50 ppb by weight of the vinyl chloride homopolymer component.

4. In plasticized vinyl chloride for use as flexible tubing and as gaskets and bottle or jar liners, FDA proposes to limit residual vinyl chloride monomer to 5 ppb by weight of the vinyl chloride polymer components.

5. For rigid vinyl chloride polymer sheet, FDA proposes to limit residual vinyl chloride monomer to 10 ppb by weight of the vinyl chloride polymer component.

VI. Conclusions

Based on available toxicity data, the agency's exposure calcuations, and its estimates of the risk from the carcinogenic constituent, vinyl chloride monomer, in the polymer when the polymer complies with the specifications that the agency is proposing, FDA tentatively concludes that the use of vinyl chloride polymers as food-contact materials, as described above is safe. The agency is, therefore, proposing to amend the food additive regulations and to adopt new regulations to provide for the safe use of vinyl chloride polymers. The agency is also proposing to delete from the current food additive regulations the use of vinyl chloride-vinylidene chloride copolymers as a component of coatings of fresh citrus fruit.

Following publication of the 1975 proposal, the Environmental Protection Agency (EPA), under authority of the 1974 Safe Drinking Water Act, executed a memorandum of understanding (MOU) with FDA (see 44 FR 42775; July 20, 1979). That MOU established an agreement between EPA and FDA with regard to the control of direct and indirect additives in drinking water. According to that MOU, FDA has the regulatory responsibility with respect to water, and substances in water, used in food and food processing, as well as regulatory responsibility for bottled drinking water under the act. The MOU also gives primary regulatory responsibility to EPA for direct and indirect additives in municipal drinking water under the Safe Drinking Water Act, the Toxic Substances Control Act, and the Federal Insecticide, Fungicide and Rodenticide Act. Therefore, FDA has deferred to EPA to prescribe conditions for the safe use of vinyl chloride polymer pipe in municipal water systems.

The agency has carefully considered the potential envoronmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25) that was published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985).

FDA welcomes the submission of any data bearing on the issues and conclusions contained in the finding of no significant impact and the environmental assessment. FDA would particularly like any additional information on the environmental fate (e.g., persistence) of di(2-ethylhexyl) phthalate, di(2-ethylhexyl) adipate, and expoxidized soybean oil in terrestrial and benthic environments, and any additional information on the effects (acute, subacute, and chronic) of these chemicals on representative organisms from those environments. FDA would also like additional information on whether vinyl chloride polymers contribute to the emission of polychlorinated dibenzo-*p*-dioxins and polychlorinated dibenzofurans from

municipal solid waste incinerators. FDA will reexamine its conclusions if new information becomes available suggesting that this action will have significant environmental impact.

The agency has prepared an assessment concerning the economic impact of the proposed rule. The cost expected to arise from any final rule based on this proposed rule is the cost of reducing residual vinyl chloride monomer to acceptable levels in food-contact articles containing vinyl chloride. FDA has found that since 1975, most vinyl chloride polymer resin manufacturers and manufacturers of food-contact articles containing vinyl chloride have made the changes in their manfuacturing processes that are necessary to produce vinyl chloride polymers that comply with this regulation. Therefore, this regulation should not produce any new developmental costs for manufacturers. The agency notes, however, that the improved methods of manufacturing vinyl chloride polymers are more expensive than those that were in use before 1975. The agency estimates that these new methods cost about $2.9 million more annually than their predecessors.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will result from this action. A copy of the assessment supporting these determinations may be seen in the Dockets Management Branch (address above).

Interested persons may, on or before April 4, 1986, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 172

Food additives.

21 CFR Part 175

Adhesives, Food additives, Food packaging.

21 CFR Part 176

Food additives, Food packaging.

21 CFR Part 177

Food additives, Food packaging.

21 CFR Part 179

Food additives, Food packaging, Radiation protection.

21 CFR Part 181

Food ingredients, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Parts 172, 175, 176, 177, 179, and 181 be amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10.

2. In § 172.210 by removing and reserving paragraph (b)(3) and by revising the introductory text of paragraph (b)(4) to read as follows:

§ 172.210 Coatings on fresh citrus fruit.

* * * * *

(b) * * *

(3) [Reserved]

(4) In lieu of the components listed in paragraph (b)(2) of this section, the following rosin derivatives and either or both of the listed adjuvants:

* * * * *

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

3. The authority citation for 21 CFR Part 175 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10.

4. In § 175.105 (c) (5) by revising the item "Vinyl chloride" to read as follows:

§ 175.105

Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * * * *	
Polymers. Homopolymers and copolymers of the following monomers:	
* * * * *	
Vinyl chloride.....	Residual vinyl chloride monomer content determined in the finished adhesives, using the method described in § 177.1975(c) of this chapter, shall not exceed 5 parts per billion by weight of the vinyl chloride homo- or copolymer component.
* * * * *	

* * * * *

5. In § 175.300 by adding new paragraph (i) to read as follows:

§ 175.300 Resinous and polymeric coatings.

* * * * *

(i) Residual vinyl chloride monomer content determined in the finished coatings, using the method described in § 177.1975(c) of this chapter, shall not exceed 5 parts per billion by weight of the vinyl chloride home- or copolymer component.

6. In § 175.320 by redesignating paragraph (c) as paragraph (c)(1) and by adding new paragraph (c)(2) to read as follows:

§ 175.320 Resinous and polymeric coastings for polyolefin films

* * * * *

(c) * * *

(2) For coatings formulated with a vinyl chloride homo- or copolymer listed in paragraph (b)(3) of this section, residual vinyl chloride monomer content, determined in the finished coatings, using the method described in § 177.1975(c) of this chapter, shall not exceed 5 parts per billion by weight of the vinyl chloride copolymer component.

* * * * *

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

7. The authority citation for 21 CFR Part 176 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10.

8. In § 176.170(b)(2) in the table by adding limitations to the items "vinyl chloride copolymers," "Vinyl chloride-vinyl acetate hydroxyl-modified copolymers," "Vinyl chloride-vinyl acetate hydroxyl-modified copolymers reacted with trimellitic anhydride," and "Vinylidene chloride copolymers" to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(b) * * *

(2) * * *

List of substances	Limitations
* * * * *	
Vinyl chloride copolymers * * *	For paper or paperboard in the finished form in which it is to contact food, residual vinyl chloride monomer, determined by the method described in § 177.1975(c) of this chapter, shall not exceed 5 parts per billion by weight of the vinyl chloride copolymer component.
Vinyl chloride-vinyl acetate hydroxyl-modified copolymers.	Do.
Vinyl chloride-vinyl acetate hydroxyl-modified copolymers racted with trimellitic anhydride.	Do.
Vinylidene chloride copolymers * * *	Do.

* * * * *

9. In § 176.180(b)(2) by revising the item "Vinyl chloride" to read as follows:

§ 176.180 Components of paper and paperboard in contact with dry foods.

* * * * *

(b) * * *

(2) * * *

List of substances	Limitations
* * * * *	
Polymers: Hompolymers and copolymers of the following monomers:.	* * *
* * * * *	
Vinyl chloride.....	For paper or paperboard in the finished form in which it is to contact food, residual vinyl chloride monomer, determined by the method described in § 177.1975(c) of this chapter, shall not exceed 5 parts per billion by weight of the vinyl chloride homo- or copolymer component.
* * * * *	

* * * * *

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

10. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10.

11. In § 177.1010 by revising the introductory tests of paragraph (a) (2) and (4) to read as follows:

§ 177.1010 Acrylic and modified acrylic plastics, semirigid and rigid.

* * * * *

(a) * * *

(2) Copolymers produced by copolymerization of one or more of the monomers listed in paragraph (a)(1) of this section with one or more of the following monomers, provided that for any articles that contain a vinyl chloride polymer, residual vinyl chloride monomer, the be determined in the finished form in which the articles are to contact food, using the method described in § 177.1975(c), shall not exceed 5 parts per billion by weight of the vinyl chloride copolymer component:

* * * * *

(4) Polymers identified in paragraph (a) (1), (2), and (3) of this section are mixed together and/or with the following polymers, provided that no chemical reactions, other than addition reactions, occur when they are mixed; provided further that for any polymers that include a vinyl chloride homo- or copolymer, residual vinyl chloride monomer, to be determined in the finished food-contact article, using the method described in § 177.1975(c), shall not exceed 5 parts per billion by weight of the vinyl chloride homo- or copolymer component:

* * * * *

12. In § 177.1200(c) in the table by removing the item "Polyvinyl chloride," by revising the items "Polyvinyl stearate," "Vinyl acetate-vinyl chloride copolymer resins," "Vinyl acetate-vinyl chloride-maleic acid copolymer resins," "Vinylidene chloride copolymerized with * * *," and "Vinylidene chloride-methacrylic decyloctyl copolymer," and by adding new item "Vinyl chloride homopolymer" to read as follows:

§ 177.1200 Cellophance.

* * * * *

(c) * * *

List of substances	Limitations
Polyvinyl stearate.....	As the basic polymer.
* * *	* *
Vinyl acetate-vinyl chloride copolymer resins.	As the basic polymer. For the finished cellophane base sheet intended to contact food, residual vinyl chloride monomer, determined by the method described in § 177.1975(c), shall not exceed 5 parts per billion by weight of the vinyl chloride copolymer component.
Vinyl acetate-vinyl chloride maleic acid copolymer resins.	Do.
Vinylidene chloride copolymerized with one or more of the following: Acrylic acid, acrylonitrile, butyl acrylate, butyl methacrylate, ethyl acrylate, 2-ethylhexyl acrylate, 2-ethylhexyl methacrylate, ethyl methacrylate, itaconic acid, methacrylic acid, methyl acrylate, methyl methacrylate, propyl acrylate, propyl methacrylate, vinyl chloride.	Do.
* * *	* *
Vinyl chloride homopolymer.....	As the basic polymer. For the finished cellophane base sheet intended to contact food, residual vinyl chloride monomer, determined in the finished sheet, using the method described in § 177.1975(c), shall not exceed 5 parts per billion by weight of vinyl chloride homo- or copolymer component.
Vinylidene chloride- methacrylic decyloctyl copolymer.	As the basic polymer.
* * *	* *

* * * * *

13. In § 177.1210(b)(5) by revising the item "Vinyl chloride-vinyl stearate copolymer" to read as follows:

§177.1210 Closures with sealing gaskets for food containers.

* * * * *

(b) * * *

(5) * * *

List of substances	Limitations (expressed as percent of weight of closure-sealing gasket composition)
* * * * *	
Vinyl coloride-vinyl stearate copolymer.	Residual vinyl chloride monomer, determined in the finished closures with sealing gaskets, using the method described in § 177.1975(c), shall not exceed 5 parts per billion by weight of the vinyl chloride copolymer component.
* * * * *	

* * * * *

14. In § 177.1630(e)(4)(iii) by revising the item "Vinyl chloride" to read as follows:

§ 177.1630 Polyethylene phthalate polymers.

* * * * *

(e) * * *

(4) * * *

(iii) * * *

Vinylidene chloride copolymerized with one or more of the following:

* * * * *

Vinyl chloride. Residual vinyl chloride monomer, determined in the finished copolymer coating, using the method described in § 177.1975(c), shall not exceed 5 parts per billion by weight of the vinyl chloride copolymer component.

* * * * *

15. In § 177.1850 by revising paragraph (c)(2) to read as follows:

§ 177.1850 Textryls.

* * * * *

(c) * * *

Substances	Limitations
* * * * *	
(2) Fibryls prepared from vinyl chloride-vinyl acetate copolymer.	As the basic copolymer. For textryls containing vinyl chloride-vinyl acetate copolymer, residual vinyl chloride monomer, determined in the finished food-contact article, by the method described in § 177.1975(c), shall not exceed 5 parts per billion by weight of the vinyl chloride copolymer component.
* * * * *	

* * * * *

16. In § 177.1950 by adding new paragraph (c)(1)(iii) to read as follows:

§ 177.1950 Vinyl chloride-ethylene copolymers.

* * * * *

(c) * * *

(1) * * *

(iii) Residual vinyl chloride monomer, determined in the finished food-contact article, using the method described in § 177.1975(c), shall not exceed 10 parts per billion by weight of the vinyl chloride copolymer component.

* * * * *

17. In § 177.1960 by adding new paragraph (b)(1)(iii) to read as follows:

§ 177.1960 Vinyl chloride-hexene-1 copolymers.

* * * * *

(b) * * *

(1) * * *

(iii) Residual vinyl chloride monomer, determined in the finished food-contact article, using the method described in § 177.1975(c), shall not exceed 10 parts per billion by weight of the vinyl chloride copolymer component.

* * * * *

18. In § 177.1970 by adding new paragraph (c)(1)(iii) to read as follows:

§ 177.1970 Vinyl chloride-lauryl vinyl ether copolymers.

* * * * *

(c) * * *

(1) * * *

(iii) Residual vinyl chloride monomer, determined in the finished food-contact article, using the method described in § 177.1975, shall not exceed 10 parts per billion by weight of the vinyl chloride copolymer component.

* * * * *

19. By adding a new § 177.1975 to read as follows:

§ 177.1975 Vinyl chloride polyer resins, rigid and semirigid.

Vinyl chloride polymers may be safely used as articles or components of articles intended for use in contact with food subject to the provisions of this section.

(a) *Identity.* Vinyl chloride polymer resins consist of (1) homopolymer resins produced by polymerization of vinyl chloride, which has the molecular formula C_2H_3Cl (CAS Reg. No. 75–01–4). Vinyl chloride polymer resins (molecular formula $(C_2H_3Cl)_n$; Cas Reg. No. 9002–86–2) have a maximum volatility of not over 3 percent when heated for 1 hour at 105 C (221°F) and an inherent viscosity of at least 0.35 when determined by ASTM method D1243–79, "Standard Method of Test for Dilute Solution Viscosity of Vinyl Chloride Polymers" (Method A), which is incorporated by reference. Copies are available from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St., NW., Washington, DC 20408; and (2) copolymer resins produced by the copolymerization of vinyl chloride with other monomeric polymeric substances.

(b) *Conditions of use.* Vinyl chloride polymers identified in this section may be used alone or admixed with polymer modifiers identified in accordance with the following prescribed conditions:

(1) No chemical reactions, other than addition reactions, occur among the vinyl chloride polymers and the modifying polymers present in the manufacture of the finished food-contact article.

(c) *Limitations.* The finished food-contact articles, semirigid and rigid, for single or repeated use, shall not contain residual vinyl chloride monomer levels in excess of 10 parts per billion by weight of the vinyl chloride polymer component, as determined using the method of analysis titled, "Headspace Sampling and Gas-Solid Chromatographic Determination and Confirmation of > 1 ppb Vinyl Chloride Residues in Polyvinyl Chloride Food Packaging," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

20. In § 1177.1980 by adding new paragraph (c)(1)(iii) to read as follows:

§ 177.1980 Vinyl chloride-propylene copolymers.

* * * * *

(c) * * *

(1) * * *

(iii) Residual vinyl chloride monomer, determined in the finished food-contact article, using the method described in § 177.1975(c), shall not exceed 10 parts per billion by weight of the vinyl chloride copolymer component.

* * * * *

21. In § 177.2250 by redesignating existing paragraphs (e), (f), and (g), as paragraphs (f), (g) and (h), respectively, and by adding new paragraph (e) to read as follows:

§ 177.2250 Filters, microporous polymeric.

* * * * *

(e) Residual vinyl chloride monomer, determined in the finished microporous polymeric filters, using the method described in § 177.1975(c), shall not exceed 50 parts per billion by weight of the vinyl chloride home- or copolymer component.

* * * * *

PART 179—IRRADIATION IN THE PRODUCTION PROCESSING, AND HANDLING OF FOOD

22. The authority citation for 21 CFR Part 179 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10.

23. In § 179.45 (b)(9) and (c)(2)(iv) by adding a new sentence at the end of each paragraph to read as follows:

§ 179.45 Packaging materials for use during the irradiation of prepackaged foods.

* * * * *

(b) * * *

(9) * * * For vinylidene chloride-vinyl copolymer films identified in this paragraph residual vinyl chloride monomer in the finished food-contact article, determined using the method described in § 177.1975(c) of this chapter, shall not exceed 5 parts per billion by weight of the vinyl chloride copolymer component.

* * * * *

(c) * * *

(2) * * *

(iv) * * * For vinyl chloride-vinyl acetate copolymer film identified in this paragraph residual vinyl chloride monomer in the finished food-contact article, determined using the method described in § 177.1975(c) of this chapter, shall not exceed 5 parts per billion by weight of the vinyl chloride copolymer component.

* * * * *

PART 181—PRIOR-SANCTIONED FOOD INGREDIENTS

24. The authority citation for 21 CFR Part 181 is revised to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10.

25. By adding new § 181.37 to read as follows:

§ 181.37 Vinyl chloride homo- and copolymer resins.

(a) *Identity.* Vinyl chloride homopolymers consist of basic resins produced by the polymerization of vinyl chloride monomer (molecular formula C_2H_3Cl; CAS Reg. No. 75–01–4). Vinyl chloride homopolymer resins (molecular formula $(C_2H_3Cl)_n$; CAS Reg. No. 9002–86–2) have maximum volatility of not over 3 percent when heated for 1 hour at 105° C (221 °F) and an inherent viscosity of not less than 0.35 when determined by ASTM Method D 1243–79, "Standard Method of Test for Dilute Solution Viscosity of Vinyl Chloride Polymers" (Method A), which is incorporated by reference. Copies are available from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. Vinyl chloride copolymer resins are the polymers produced by the copolymerization of vinyl chloride monomer with other monomeric or polymeric substances. Vinyl chloride homopolymers and copolymers may be safely used as follows:

(1) *Films.* (i) Vinyl chloride polymers for use in plasticized film in contact with food.

(ii) Vinyl chloride-butadiene-acrylonitrile copolymer for use in plasticized film in contact with oleomargarine.

(iii) Vinyl chloride-vinylidene chloride copolymer for use in plasticized film in contact with food.

(iv) Vinyl chloride-vinyl acetate copolymer for use in plasticized film in contact with food.

(2) *Coatings.* (i)Vinyl chloride for use as a can enamel.

(ii) Vinyl chloride-vinyl acetate copolymer for use as a can enamel.

(iii) Vinyl chloride-butadiene-acrylonitrile resin for use as a component of conveyor belts intended for use with fresh fruits, vegetables, and fish and as a component of coatings for paper and paperboard in contact with meat and lard.

(iv) Vinyl chloride-vinylidene chloride copolymer for use as a liner, i.e., coating for steel pipe.

(3) *Waterpipe.* Vinyl chloride polymer waterpipe used for carrying water inside a food-processing plant.

(4) *Flexible tubing.* Plasticized vinyl chloride homopolymer flexible tubing ranging in internal diameter from 3 to 4 inches for transporting food.

(5) *Gaskets and bottle or jar liners.* Vinyl chloride copolymer resin compositions containing up to 80 percent basic resin for use in contact with food.

(6) *Rigid sheet.* Vinyl chloride-vinyl acetate copolymers as basic resin in containers made from polymeric rigid sheet for packaging poultry only.

(b) *Limitations.* (1) Residual vinyl chloride monomer, determined in the finished food-contact article described in paragraph (a) (1) (i), (ii), (iv) and (2) of this section, using the method described in paragraph (c) of this section, shall not exceed 5 parts per billion by weight of the vinyl chloride homor copolymer component.

(2) For vinyl chloride-vinylidene chloride copolymer film described in paragraph (a)(1)(iii) of this section, residual vinyl chloride monomer, determined in the finished food-contact article using the method described in paragraph (c) of this section, shall not exceed 50 parts per billion by weight of the vinyl copolymer component.

(3) For vinyl chloride polymer waterpipe described in paragraph (a)(3) of this section, residual vinyl chloride monomer, determined in the finished waterpipe using the method described in paragraph (c) of this section, shall not exceed 50 parts per billion by weight of vinyl chloride homoploymer component.

(4) For plasticized vinyl chloride polymer for use as flexible tubing and as gaskets and bottle or jar liners made from vinyl chloride resin compositions described in paragraph (a) (4) and (5) of this section, respectively, residual vinyl chloride monomer determined in the finished food-contact article, using the method described in paragraph (c) of this section, shall not exceed 5 parts per billion by weight of the vinyl chloride polymer component.

(5) For rigid vinyl chloride-vinyl acetate resin sheet described in paragraph (a)(6) of this section, residual vinyl chloride monomer, determined in the finished food-contact article using the method described in paragraph (c) of this section, shall not exceed 10 parts per billion by weight of the vinyl chloride copolymer component.

(c) *Analytical method.* The residual concentration of vinyl chloride monomer in food-contact articles shall be determined by using the method of analysis titled, "Headspace Sampling and Gas-Solid Chromatographic Determination and Confirmation of ≥1 ppb Vinyl Chloride Residues in Polyvinyl Chloride Food Packaging," which is incorporated by reference. Copies are available from the Division of Food and Color Additives (HFF–330), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

Dated: January 27, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86–2235 Filed 1–31–86; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 880

[Docket No. 85N–0285]

General Hospital and Personal Use Devices; Premarket Approval of the Infant Radiant Warmer

Correction

In FR Doc. 86–832, beginning on page 1910 in the issue of Wednesday, January 15, 1986, make the following corrections:

1. On page 1910, second column, first complete paragraph, second line, "21 U.S.C. 231(f)" should have read "21 U.S.C. 351(f)".

2. On page 1911, third column, last line "W_{11}" should have read "Wu".

BILLING CODE 1505–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Reopening and Extension of Public Comment Period on a Proposed Amendment to the Ohio Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Reopening and extension of public comment period.

SUMMARY: By letter dated November 6, 1984, Ohio submitted a program amendment consisting of a revision to rule 1501:13–14–03 concerning civil penalties. OSMRE published a notice in the **Federal Register** on December 12, 1984, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (49 FR 48324).

Following a review of the Ohio amendment, OSMRE notified the State on March 11, 1985, of its concerns about the amendment relating to alternative enforcement. On June 21, the State responded by submitting a policy statement addressing the implementation of alternative enforcement measures.

OSMRE reopened and extended the public comment period on July 19, 1985 for 15 days (50 FR 29438).

Additional review of Ohio's amendment and policy statement resulted in a second letter to the State, dated September 25, 1985, identifying concerns and seeking clarification. The State responded on December 19, 1985, with a letter clarifying its policy statement.

Accordingly, OSMRE is reopening and extending the comment period on Ohio's November 6, 1984 amendment as modified on June 21 and December 19, 1985. This action is being taken to provide the public an opportunity to reconsider the adequacy of the proposed amendment.

DATE: Written comments, data or other relevant information relating to this rulemaking not received on or before 4:30 p.m. February 18, 1986, will not necessarily be considered in the Director's decision.

ADDRESSES: Written comments should be mailed or hand delivered to Ms Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

Copies of the Ohio program, the proposed amendment and modification to the program, and all written comments received in response to this notice will be available for public review at the OSMRE Field Office listed above and at the OSMRE Headquarters office and the Office of the State regulatory authority listed below, during normal business hours, Monday through Firday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting OSMRE's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Room 5124, 1100 L Street, NW., Washington, DC 20240

Ohio Division of Reclamation, Fountain Square, Building B-3, Columbus, Ohio 43224

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

The Ohio program was approved effective August 16, 1982. Information pertinent to the general background, revisions, modifications and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 Federal Register (47 FR 34688).

II. Proposed Amendment

By letter dated November 6, 1984, Ohio submitted a proposed program amendment consisting of a revision to rule 1501:13-14-03 concerning civil penalties, setting a 30-day cap on failure-to-abate cessation order assessments and establishing assessment conference procedures. The proposed amendment also provides for alternative enforcement actions to be taken if a violation has not been abated within 30 days.

OSMRE announced receipt of the amendment and initiated a public comment period on December 12, 1984 (49 FR 48324). The comment period closed on January 11, 1985.

During review of the amendment, OSMRE identified one concern. The proposed amendment did not specify how alternative enforcement measures will be implemented at the end of the 30-day abatement period to ensure that violations will be corrected. OSMRE notified Ohio about this concern by letter dated March 11, 1985. On June 21, 1985, Ohio responded by providing a policy statement on the implementation of alternative enforcement measures.

OSMRE announced receipt of the policy statement and initiated a public comment period on July 19, 1985 (50 FR 29438). The comment period closed on August 5, 1985.

OSMRE's review of Ohio's policy statement identified additional concerns. They included a limit on the types of violations for which alternative enforcement would be considered, clarification of public interests which may obviate the need for civil action, and lack of documentation as to alternative enforcement actions taken. Ohio was notified of these concerns in a letter dated September 25, 1985. On December 19, 1985, Ohio responded with a letter providing the clarification OSMRE had requested.

The full text of the proposed amendment and of the subsequent material is available for review at the locations listed above under "ADDRESSES". OSMRE is now seeking public comment on the adequacy of Ohio's November 6, 1984 amendment in light of the June 21, 1985 and December 19, 1985 modifications. If the Director determines that the proposed amendment is no less stringent than SMCRA and no less effective than the Federal regulations, the amendment will be approved and become part of the approved permanent program.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: January 28, 1986.

Brent Walquist,

Assistant Director, Program Operations.

[FR Doc. 86-2225 Filed 1-31-86; 8:45 am]

BILLING CODE 4310-05-M

POSTAL SERVCE

39 CFR Part 111

Annual Fee—Third-Class Bulk Rates

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The purpose of this proposal is to clarify the intent and effect of the final rule published in the Federal Register on May 17, 1985, concerning annual third-class bulk fees. This proposal will make it clear that when a bulk third-class mailing is made under the permit imprint system, only the individual or organization whose permit imprint is shown on the mailing piece itself and on the mailing statement must pay the annual bulk mailing fee. Currently, a bulk fee must be paid for the person or organization actually entering mailings at the bulk rates at a post office, regardless of the method of postage payment.

DATE: Comments must be received on or before March 5, 1986.

ADDRESS: Written comments should be directed to the Director, Office of Mail Classification, Rates and Classification Department, U.S. Postal Service, Washington, DC 20260-5361. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room P220, U.S.

Postal Service Headquarters, 935 L'Enfant Plaza N., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Beller, (202) 245–4655.

SUPPLEMENTARY INFORMATION:

I. Background

On April 1, 1985, the Postal Service Published a proposed rule in the **Federal Register** recommending that section 641 of the Domestic Mail Manual, be amended in order to achieve consistency in the application of bulk third-class annual fee requirements. (50 FR 12839) After evaluation of all comments, a final rule change was published in the May 17, 1985, **Federal Register**. (50 FR 20567) However, the explanation of that rule change and the rule change itself contained contradictory statements regarding the payment of annual bulk third-class mailing fees. Therefore, this proposed rule is intended to clarify the applicability of the requirement of payment of bulk fees.

The published rule change amended section 641 to require payment of a bulk third-class annual fee only for those individuals or organizations which actually enter mailings at a post office at the bulk third-class rates of postage. For purpose of applying the fee requirememt, the originator of mail and the method of postage payment were irrelevant. However, in responding to a question raised by one of the commenters, the Postal Service stated that when an agent enters a permit imprint mailing which bears the permit imprint of a client on the mailing pieces and on the mailing statement, the client is considered to be the mailer and the annual bulk fee must be paid for the client rather than for the agent entering the mail. This approach takes into consideration the fact that the Postal Service incurs the administrative costs related to maintaining and active permit imprint postage account for those mailers who pay postage under the permit imprint system. However, the language of the regulation, which requires payment of the bulk fee only for the entity actually entering the mailing, is inconsistent with the logical conclusion stated in the explanation. It should be noted that the Postal Service does not incur these administrative costs when postage is prepaid using meter stamps or precanceled stamps.

II. Recommended Change

The Postal Service has concluded that the proposed change, in which only the holder of a permit imprint needs to pay the annual bulk third-class fee for mail bearing his permit imprint, would result in application of the bulk third-class annual fee in a manner which most accurately reflects the legitimate business purposes supporting the fee requirement.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed amendment of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

List of subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3621, 5001; 42 U.S.C. 1973cc–13, 1973cc–14.

PART 6—THIRD-CLASS MAIL

640 Authorizations and Permits

2. Revise 641 to read as follows:

641 Annual Fee—Bulk Rates

Except when a third-class bulk mailing is made under the permit imprint system, each person or organization that enters mailings at the regular or special bulk third-class rates must pay an annual bulk mailing fee at each post office where one or more mailings will be deposited (see 612.1). Persons or organizations paying this fee may enter mail of their clients as well as their own mail. When a third-class bulk mailing is made under the permit imprint system, the person or organization whose permit imprint is on the mailing piece must put his or its permit number on the mailing statement and must pay the annual bulk mailing fee. The annual bulk mailing fee must be paid at or before the time of the first bulk rate mailing of each calendar year. Note: This fee is separate from the fee that must be paid for a permit to mail under the permit imprint system (see 145.2).

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86–2288 Filed 1–31–86; 8:45 am]

BILLING CODE 7710–12–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86–18; RM–4996]

FM Broadcast Station in Twentynine Palms, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allotment of Channel 299A to Twentynine Palms, California, as that community's second local FM service, in response to a petition filed by Wayne R. Stenz d/b/a Westwind Radio Company.

DATES: Comments must be filed on or before March 24, 1986, and reply comments on or before April 8, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Twentynine Palms, California); (MM Docket No. 86–18, RM–4996).

Adopted: January 17, 1986.

Released: January 29, 1986.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by Wayne R. Stenz, d/b/a/ Westwind Radio Company ("petitioner"), requesting the allotment of Channel 299A to Twentynine Palms, California, as that community's second local FM service. Petitioner states that he will apply for the channel, if assigned.

2. A staff engineering study indicates that Channel 299A can be allotted to Twentynine Palms, California, in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules. Since the proposed allotment is to be located

within 320 kilometers (199 miles) of the common U.S.-Mexico border, the Commission must obtain the Mexican government's consent thereto.

PART 73—[AMENDED]

3. In view of the fact that the proposal could provide a second local FM service to Twentynine Palms, California, for the expression of diverse viewpoints and programming, the Commission believes it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Twentynine Palms, CA	239	239, 299A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before March 24, 1986, and reply comments on or before April 8, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: J. Geoffrey Bentley, Esq., Arter and Hadden, 1919 Pennsylvania Ave., NW., Washington, DC 20006 (Counsel for Petitioner).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202 of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-2272 Filed 1-31-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-17; RM-4973]

FM Broadcast Station in Kings Beach, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allotment of Channel 299A to Kings Beach, California, as that community's first local FM brodcast service, in response to a petition filed by Eric R. Hilding.

DATES: Comments must be filed on or before March 6, 1986, and reply comments on or before March 21, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Kings Beach, California) MM Docket No. 86-17, RM-4973.

Adopted: January 17, 1986.
Released: January 28, 1986.

By the Chief, Policy and Rules Division.

1. The Commission herein considers a petition for rule making filed by Eric R. Hilding ("petitioner") requesting the allotment of Channel 299A to Kings Beach, California, as that community's first local FM broadcast service. Petitioner failed to specifically state that he will apply for the channel, if allotted. He should do so in his comments to this *Notice*.

2. A staff engineering study reveals that Channel 299A can be allotted to Kings Beach, California in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

PART 73—[AMENDED]

3. In view of the fact that the proposal could provide a first local FM service to Kings Beach, California, we believe it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with respect to that community, as follows:

City	Channel No.	
	Present	Proposed
Kings Beach, Cal.		299A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before March 21 1986, and reply comments on or before April 7, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Eric R. Hilding, P.O. Box 1300, Freedom, California 95019–1300.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, on that parties may comment o them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86–2271 Filed 1–31–86; 8:45 am]
BILLING CODE 6712-010M

47 CFR Part 73

[MM Docket No. 86–13; RM–4962; RM–5065]

FM Broadcast Station in Dawnville and Ringgold, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of Channel 270A to either Dawnville or Ringgold, Georgia, in response to petitions filed by Maria Teresa Spina and Bedros D. Daghlian, respectively. The proposals could provide a first local service to either community.

DATES: Comments must be filed on or before March 20, 1986, and reply comments on or before April 4, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and excutive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Dawnville and Ringgold, Georgia); MM Docket No. 86-13, RM-4962, RM 5065.

Adopted: January 21, 1986.

Released: January 27, 1986.

By the Chief, Policy and Rules Division.

1. The Commission herein considers two separate petitions for rule making. The first was filed by Maria Teresa Spina, proposing the allotment of Channel 270A to Dawnville, Georgia. The second petition was filed by Bedros D. Daghlian, proposing to allot Channel 270A to Ringgold, Georgia. The proposals could provide a first local service to either Dawnville or Ringgold. Since the distance between Dawnville and Ringgold is approximately 9 miles instead of the required 65 miles, these proposals are mutually exclusive.

2. A staff engineering study reveals that there are no other channels available to either community. Thus, we shall provide each proponent an opportunity to demonstrate in comments to the *Notice* why its community should receive the allotment. In this regard, the parties should be guided by our action in *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982).

3. Channel 270A can be allotted to both communities in compliance with the requirements of § 73.207 of the Rules. Channel 270A at Ringgold will require a site restriction of 7.8 kilometers (4.9 miles) east of the city to avoid short spacing to Station WDRM, Decatur, Alabama (Channel 271).

PART 73—[AMENDED]

4. In view of the foregoing, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Rules, with regard to the following cities:

City	Channel No.	
	Present	Proposed
Dawnville, GA		270A
or		
Ringgold, GA		270A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before March 20, 1986, and reply comments on or before April 4, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

(Dawnville) Nancy L. Wolf, Dow, Lohnes & Albertson, 1255 Twenty-Third St., NW., Washington, D.C. 20037;

(Ringgold) James E. Price, Sterling Communications, Inc., Suite 418—Uptain Building, Chattanooga, Tennessee 37401.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceedings.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.410 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four

copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 86-2273 Filed 1-31-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-21; RM-5116]

FM Broadcast Station in Colby, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allotment of Class C FM Channel 250 to Colby, Kansas as that community's second commercial FM channel in response to a petition filed by The Bailey Corporation.

DATES: Comments must be filed on or before March 24, 1986, and reply comments on or before April 8, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the Matter of Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations (Colby, Kansas); MM Docket No. 86-21, RM-5116.

Adopted: January 17, 1986.
Released: January 29, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a petition for rule making filed by The Bailey Corporation ("petitioner") requesting the allotment of Class C FM Channel 250 to Colby, Kansas as that community's second FM channel. Petitioner has expressed an intention to apply for the channel, if allocated. The channel can be allotted in compliance with the Commission's minimum distance separation requirements.

PART 73—[AMENDED]

2. In view of the fact that the proposed allotment could provide a second FM service to Colby, Kansas the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, for the following community:

City	Channel No.	
	Present	Proposed
Colby, KS	282	250, 282

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allocated.

4. Interested parties may file comments on or before March 24, 1986, and reply comments on or before April 8, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Michael D. Basile, Esq. Dow, Lohnes & Albertson, 1255 Twenty-Third Street, NW., Washington, D.C. 20037 (Counsel to Petitioner).

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to AMEND the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must

be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a) (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 86-2274 Filed 1-31-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-20; RM-5160]

FM Broadcast Station in Menominee, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the substitution of Channel 241A for 292A at Menominee, Michigan, in order to permit a change in transmitter site for Station WAPL-FM, Appleton, Wisconsin, in response to a petition filed by Woodward Communications, Inc.

DATES: Comments must be filed on or before March 24, 1986, and reply comments on or before April 8, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303,. 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making and Order To Show Cause

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Menominee, Michigan) MM Docket No. 86-20, RM-5160.

Adopted: January 17, 1986.

Released: January 29, 1986.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Woodward Communications, Inc. ("petitioner"), requesting the substitution of FM Channel 241A for 292A at Menominee, Michigan. Petitioner is the licensee of FM Station WAPL-FM, Channel 289, Appleton, Wisconsin. Station WAPL-FM has filed an application (BPH-850712LG) to relocate Station WAPL-FM's transmitter to a site which would permit retention of its Class C designation. The new site for Station WAPL-FM's transmitter is located in the vicinity of four tall television broadcast towers in Appleton. However, the site is short spaced to Station WCJL-FM, Channel 292A, Menominee, Michigan. Thus it would be necessary to substitute for the Menominee channel. Channel 241A can be allocated in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules. Thus, we shall propose the substitution of Channel 241A for existing Channel 292A at Menominee. Since Menominee is located within 320 kilometers (200 miles) of the common U.S. -Canadian border, Canadian concurrence is required.

2. Petitioner has stated that he understands that it would be the responsibility of Station WAPL-FM to reimburse Station WCJL-FM for its reasonable costs in changing frequency.

PART 73—[AMENDED]

3. In view of the foregoing, the Commission proposes to amend the FM Table of Allotments, §73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Menominee, MI	292A	241A

4. It is ordered, that pursuant to § 316(a) of the Communications Act of 1934, as amended, CJL Broadcasting, Inc., the licensee of Station WCJL-FM, Menominee, Michigan, shall show cause why its license should not be modified to specify operation on Channel 241A instead of 292A.

5. Pursuant to § 1.87 of the Commission's Rules, CJL Broadcasting, Inc. may, not later than March 24, 1986, request that a hearing be held on the proposed modification. If the right to request a hearing is waived, CJL Broadcasting, Inc. May, not later than April 8, 1986, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause.* In this case, the Commission may call on CJL Broadcasting, Inc. To furnish additional information, designate the matter for hearing, or issue, without further proceedings, an *Order* modifying the license as provided in the *Order to Show Cause.* If the right to request a hearing is waived and no written statement is filed by the date referred to above, CJL Broadcasting, Inc. will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

6. It is further ordered, that the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following: CJL Broadcasting Inc., 844 Pierce Avenue, Box 689, Marinette, Wisconsin 54143.

7. The Commission's Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before March 24, 1986, and reply comments on or before April 8, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: John G. Johnson, Jr., Peggy Kobacker Shiffrin, Rachelle B. Chong, Kadison, Pfaelzer, Woodard, Quinn & Rossi, 2000 Pennsylvania Avenue, NW., Suite 7500, Washington, DC 20006 (Counsel for the Petitioner).

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

10. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a

Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-2275 Filed 1-31-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-16; RM-4976]

FM Broadcast Station in South Sioux City, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of FM Channel 289A to South Sioux City, Nebraska, in response to a petition filed by Rudy LeRoy Spirk. This allotment could provide for a first FM service for the community.

DATES: Comments must be filed on or before March 6, 1986, and reply comments on or before March 21, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the Matter of Amendment of § 73.202(b), Table of Alltoments, FM Broadcast Stations, (South Sioux City, Nebraska), MM Docket No. 86-16, RM-4976.

Adopted: January 17, 1986.
Released: January 28, 1986.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Rudy LeRoy Spirk ("petitioner"), requesting the allotment of FM Channel 289A to South Sioux City, Nebraska, as that community's first broadcast service. Petitioner submitted information in support of the proposal and indicated his intention to file for the channel, if allocated.

2. Channel 289A can be allocated to South Sioux City, Nebraska, consistent wiht the minimum distance requirements of the Commission's Rules.

PART 73—[AMENDED]

3. In view of the fact that the proposed allotment could provide a first FM broadcast service to South Sioux City, Nebraska, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
South Sioux City, NE		289A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel is allotted.

5. Interested parties may file comments on or before March 21, 1986, and reply comments on or before April 7, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Richard J. Hayes, Jr., 1359 Black Meadow Road, Spotsylvania, Virginia 22553 (Counsel for the petitioner).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of allotments, § 73.202(b) of the Commission's Rules.

See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation requred by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rules Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and reply comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other document shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86–2276 Filed 1–31–86; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–19; RM–5061]

FM Broadcast Station in Nags Head, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allocation of Channel 222A to Nags Head, North Carolina, as that community's first local FM service, at the request of Winfas, Inc. and Winfas of Belhaven, Inc.

DATES: Comments must be filed on or before March 24, 1986, and reply comments on or before April 8, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73.

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Nags Head, North Carolina) MM Docket No. 86–19, RM–5061.

Adopted: January 17, 1986.
Released: January 29, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the petition for rule making filed by Winfas, Inc. and Winfas of Belhaven, Inc. ("petitioner") requesting the allocation of Channel 222A to Nags Head, North Carolina, as that community's first local FM service.[1] Channel 222A can be allocated in compliance with the Commission's minimum distance separation and other technical requirements. Petitioner states that it will apply for the frequency, if allocated.

PART 73—[AMENDED]

2. We believe the public interest would be served by soliciting comments on the allocation as it could provide Nags Head with its first local FM service. Accordingly, we propose to amend the FM Table of Allotments, § 73.202(b) of the Rules as concerns the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Nags Head, NC		222A

[1] Petitioner filed this request as part of a counterproposal in MM Docket 84–231, *Implementation of BC Docket No. 80–90 to Increase the Availabliity of FM Broadcast Assignments*, seeking channel substitutions at Jacksonville and Belhaven, North Carolina, and simultaneous modification of its licenses to specify the higher powered channels. The Nags Head proposal did not conflict with any of the Docket 84–231 proposals and therefore need not be delayed pending action in that proceeding.

3. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before March 24, 1986, and reply comments on or before April 8, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Gary S. Smithwick, Keith & Smithwick, 1320 Westgate Drive, Winston-Salem, North Carolina 27103 (Counsel to petitioner).

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amend, and §§ 0.61, 0.204(b) and 0.238 of the Commission's Rules, it is proposed to amended the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceedings.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will will be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitoner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, DC.

[FR Doc. 86-2277 Filed 1-31-86; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-14; RM-5132]

FM Broadcast Station in Ketchum, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allocation of Channel 298C2 to Ketchum, Oklahoma, as the community's first local FM service, at the request of PBL Broadcasting, Inc.

DATES: Comments must be filed on or before March 20, 1986, and reply comments on or before April 4, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Ketchum, Oklahoma) MM Docket No. 86-14, RM-5132.

Adopted: January 17, 1986.

Released: January 27, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it the petition for rule making filed by PBL Broadcasting, Inc. ("petitioner") requesting the allocation of Channel 298C2 to Ketchum, Oklahoma, as the community's first local FM service. Petitioner states that he will apply for the channel, if allocated. Channel 298C2 can be allocated to Ketchum in compliance with the Commission's minimum distance spearation requirements if the transmitter site is restricted to an area to least 14.3 kilometers (8.9 miles) northwest to avoid short-spacings to Stations KAYI, Muskogee, Oklahoma, KINE, Poteau,

Oklahoma, and KFKB, Mountain Home, Arkansas.

PART 73—[AMENDED]

2. We believe the public interest would be served by seeking comments on the proposed allotment as it could provide Ketchum with its first local service. Accordingly, we propose to amend the FM Table of Allotments, § 73.202(b) of the Rules, with respect to the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Ketchum, OK		298C2

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.— A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before March 20, 1986, and reply comments on or before April 4, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: PBL Broadcasting, Inc., P.O. Box 1236, Bartlesville, Oklahoma 74005.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making prodeedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contract Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division: Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307 (b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advances in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (see § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-2278 Filed 1-31-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-379; RM-5091]

FM Broadcast Station in Franklin, VA

Correction

In FR Doc. 85-29916 beginning on page 51560 in the issue of Wednesday, December 18, 1985, make the following correction:

On page 51560, in the first column, in the third line of **DATES,** "February 13" should read "February 18".

BILLING CODE 1505-01-M

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47 CFR Part 73

[MM Docket No. 86-15; RM-5067]

TV Broadcast Station in Ozark, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to assign UHF television Channel 34 to Ozark, Alabama, as that community's first local television broadcast service, in response to petition filed on behalf of Johnny LaCarter.

DATES: Comments must be filed on or before March 20, 1986, and reply comments on or before April 4, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154,

303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rulemaking

In the matter of Amendment of § 73.606(b), table of assignments, television broadcast stations (Ozark, Alabama): MM Docket No. 86-15, RM-5067.

Adopted: January 17, 1986.
Released: January 27, 1986.

By the Chief, Policy and Rules Division.

1. The Commission herein considers a petition for rule making filed by Johnny LaCarter ("petitioner") seeking the assignment of UHF television Channel 34 to Ozark, Alabama, as that community's first local television service. Petitioner indicates that he will apply for the channel, if assigned.

2. Ozark (population 13,188),[1] the seat of Dale County (population 47,821), is located in southeastern Alabama, approximately 113 kilometers (70 miles) southeast of Montgomery. Currently, it has no local television assignment.

3. A staff engineering study reveals that proposed Channel 34 can be assigned at Ozark, Alabama consistent with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules.

PART 73—[AMENDED]

4. In view of the fact that the proposed assignment could provide a first local television service to Ozark, we believe the proposal warrants consideration. Therefore, we shall propose to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Ozark, Alabama		34

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before March 20, 1986, and reply comments on or before April 4, 1986, and are advised to read the Appendix for the proper procedures.

Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: John A. Borsari, Esquire, Joseph P. Benkert, Esquire, Dutton and Overman, 2000 M Street, NW., Suite 260, Washington, DC 20036 (Counsel for Petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involves channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comments which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or person acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments

[1] Population figures were extracted from the 1980 U.S. Census.

shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-2279 Filed 1-31-86; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 51, No. 22
Monday, February 3, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of Advocacy and Enterprise; Citizens' Advisory Committee on Equal Opportunity; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name: Citizens' Advisory Committee on Equal Opportunity.

Date: April 6–11, 1986.

Place: Altamonte Springs Hilton and Towers 350 South Northlake Boulevard, Altamonte Springs, Florida 32701.

Time: 9:00 a.m.—5:00 p.m.

Purpose:

—Advise the Secretary on the effectiveness of compliance program directives;
—Review all aspects of the Department's policies, practices, and procedures on Equal Opportunity;
—Recommend changes in Department rules, regulations, and orders to assure USDA activities are free from discrimination.

Addtionally, will specifically focus on:

—Operational programs and constituent services in the areas of Agricultural Marketing Services, Farmer's Home Administration, Extension Services, and Food and Nutrition Services;
—USDA, and 1890 and 1862 Land Grant Institutions' responsibilities to each other;
—Budget issues affecting USDA/Equal Opportunity;
—Continued outreach efforts in Equal Opportunity that are being initiated by the Committee members;
—Networking with constituents groups that are recipients of USDA services.

The meeting is open to the public. Persons may participate in the meeting as time and space permit. Persons who wish to address the Committee at the meeting or who wish to file written comments before or after the meeting should contact: Lawrence Bembry, Associate Director, Equal Opportunity, Office of Advocacy and Enterprise, U.S. Department of Agriculture, 201 14th Street, SW. Room 2305 Auditors Bldg., Washington, DC 20250 (202) 447–5681.

Written statements may be submitted until March 28, 1986.

Lawrence Bembry,

Associate Director, Equal Opportunity Office of Advocacy and Enterprise.

[FR Doc. 86–2297 Filed 1–31–86; 8:45 am]

BILLING CODE 3410-01-M

Federal Grain Inspection Service

Designation Renewal of Frankfort Grain Inspection, Inc. (IN), Jinks Grain Weighing Service (IL), and Paris Illinois Grain Inspection (IL)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Frankford Grain Inspection, Inc. (Frankfort), Jinks Grain Weighing Service (Jinks), and Paris Illinois Grain Inspection (Paris), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: March 1, 1986.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agirculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced that Frankfort's, Jinks', and Paris' designations terminate on February 28, 1986, and requested applications for official agency designation to provide official services within specified geographic areas in the August 30, 1985, **Federal Register** (50 FR 35276). Applications were to be postmarked by September 30, 1985. Frankfort, Jinks, and Paris were the only applicants for their respective designations and each applied for designation renewal in the areas currently assigned to those agencies.

FGIS announced the applicant names and requested comments on the same in the October 25, 1985, **Federal Register** (50 FR 43427). Comments were to be postmarked by December 9, 1985. No comments were received regarding Frankfort's and Jink's designation renewal. Two comments were received regarding Paris' designation renewal. The commentors questioned the timeliness of service provided by Paris. FGIS has reviewed this matter with the agency. Paris has or will correct any agency procedures as appropriate, to provide timely services.

FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), determined that Frankfort, Jinks, and Paris are able to provide official services in the geographic area for which FGIS is renewing their designation. Effective March 1, 1986, and terminating February 28, 1989, Frankfort will provide official inspection services and Class X of Y weighing services; Jinks will provide Class X or Class Y weighing services; and Paris will provide official inspection services in their specified geographic areas, which are the entire areas previously described in the August 30 **Federal Register.**

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may contact the Review Branch, specified in the address section of this notice, to obtain a list of an agency's specified service points. Interested persons also may obtain a list of the specified service points by contacting the appropriate agency at one of the following addresses:

Frankfort Grain Inspection, Inc., R.R. #2, Frankfort, IN 46041;
Jinks Grain Weighing Service, R.R. 1, Box 81, Homer, IL 61849;
Paris Illinois Grain Inspection, 1020 North Central Avenue, Paris, IL 61944.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: January 22, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86-2192 Filed 1-31-86; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Areas Currently Assigned to Cedar Rapids Grain Service, Inc. (IA), Champaign-Danville Grain Inspection Departments, Inc. (IL), and Springfield Grain Inspection Department (IL)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to Cedar Rapids Grain Service, Inc. (Cedar Rapids), Champaign-Danville Grain Inspection Departments, Inc. (Champaign-Danville), and Springfield Grain Inspection Department (Springfield).

DATE: Comments to be postmarked on or before March 20, 1986.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Staff, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS requested applications for official agency designation to provide official services within specified geographic areas in the December 2, 1985, **Federal Register** (50 FR 49435). Applications were to be postmarked by January 2, 1986. Cedar Rapids and Champaign-Danville were the only applicants for their respective designations and each applied for designation renewal in the areas currently assigned to those agencies. We received two applications for the Springfield area. Springfield applied for designation renewal in the area currently assigned to that agency, except for OK Grain Company, Litchfield, Montgomery County. Southern Illinois Grain Inspection Service, Inc., Fairview Heights, Illinois, applied for designation for OK Grain Company, Litchfield, Montgomery County.

This notice provides interested persons the opportunity to present their comments concerning the designation applicants. All comments must be submitted to the Information Resources Staff, Resources Management Division, specified in the address section of this notice.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: January 13, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86-2193 Filed 1-31-86; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants to Provide Official Services in the Geographic Area Currently Assigned to Eastern Iowa Grain Inspection and Weighing Service, Inc. (IA)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of one agency will terminate, in accordance with the Act, and requests applications from parties, including the agency currently designated, interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agency. The official agency is Eastern Iowa Grain Inspection and Weighing Service, Inc.

DATE: Applications to be postmarked on or before March 5, 1986.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of FGIS is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Eastern Iowa Grain Inspection and Weighing Service, Inc. (Eastern Iowa), R.R. #1, Box 588, Blue Grass, IA 52726, was designated under the Act as an official agency to provide inspection functions on August 1, 1983.

The official agency's designation terminates on July 31, 1986. Section 7(g)(1) of the Act states that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Eastern Iowa, in the States of Illinois and Iowa, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

The southern area is:

Bounded on the North, in Iowa, by Interstate 80 from the western Iowa County line east to State Route 38; State Route 38 north to State Route 130; State Route 130 east to Scott County; the western and northern Scott County lines east to the Mississippi River;

Bounded on the East, from the Mississippi River, in Illinois, by the eastern Rock Island County line; the northern Henry and Bureau County lines east to State Route 88; State Route 88 south; the southern Bureau County line; the eastern and southern Henry County lines; the eastern Knox County lines;and

Bounded on the South by the southern Knox County line; the eastern and southern Warren County lines; the southern Henderson County line west to the Mississippi River; in Iowa, by the southern Des Moines, Henry, Jefferson, and Wapellos County lines; and

Bounded on the West by the western and northern Wapello County lines; the western and northern Keokuk County lines, the western Iowa County line north to Interstate 80.

The northern area is:

Bounded on the North, in Iowa, by the northern Delaware and Dubuque County lines; in Illinois, by the northern Jo Daviess, Stephenson, Winnebago, Boone, McHenry, and Lake County lines east to Interstate 94;

Bounded on the East by Interstate 94 south to Interstate 294; Interstate 294 south to Interstate 55; Interstate 55 southwest to the southern Dupage County line;

Bounded on the South by the southern Dupage, Kendall, Dekalb, and Lee County lines; and

Bounded on the West by the western Lee and Ogle County lines; by the southern Stephenson and Jo Daviess County lines; in Iowa, by the southern Dubuque and Delaware County lines; and the western Delaware County line.

The following location, outside of the foregoing contiguous geographic area, is presently assigned to Eastern Iowa and is part of this geographic area assignment: Leland Farmers Company, Leland, LaSalle County, Illinois.

Exceptions to the described geographic area are the following locations situated inside Eastern Iowa's area which have been and will continue to be serviced by the following official agencies:

1. McGregor Grain Inspection and Weighing Corporation, Inc., will service Paris and Sons Grain Elevator, Masonville, Delaware County, Iowa;

2. Keokuk Grain Inspection Service will service Central Soya, Inc., Dallas City, and Lomax Grain Elevator, Lomax, both in Henderson County, Illinois.

Interested parties, including Eastern Iowa, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning August 1, 1986, and ending July 31, 1989. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: January 13, 1986.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 86–2194 Filed 1–31–86; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to Ohio Valley Grain Inspection (IN)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicant for official agency designation in the geographic area currently assigned to Ohio Valley Grain Inspection (Ohio Valley).

DATE: Comments to be postmarked on or before March 5, 1986.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Staff, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS requested applications for official agency designation to provide official services within specified geographic areas in the September 20, 1985, **Federal Register** (50 FR 38146). Applications were to be postmarked by October 21, 1985. We received no applications for the Ohio Valley designation postmarked by that date. As a result, we again asked for applications within the Ohio Valley area in the December 2, 1985, **Federal Register** (50 FR 49434). Applications were to be postmarked by January 2, 1986. Ohio Valley was the only applicant for designation and applied for designation renewal in the area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the designation applicant. All comments must be submitted to the Information Resources Staff, Resources Management Division, specified in the address section of this notice. In order to facilitate administrative scheduling of this matter in view of the extended period of time for requesting applications, a 30-day comment period is determined to be adequate.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: January 15, 1986.

Neil E. Porter,

Acting Director Compliance Division.

[FR Doc. 86–2195 Filed 1–31–86; 8:45 am]

BILLING CODE 3410-EN-M

ARMS CONTROL AND DISARMAMENT AGENCY

Hubert H. Humphrey Fellowship Competition

The U.S. Arms Control and Disarmament Agency will conduct a competition in 1986 for one-year Hubert H. Humphrey Fellowships in arms control and disarmament. The fellowships will support unclassified doctoral dissertation research in the field. Law candidates for the Juris Doctor or any higher degree are also eligible, if they are writing a substantial paper in partial fulfillment of degree requirements. The fellowship stipends for Ph.D. candidates will be $5,000, plus applicable tuition and fees up to a maximum of $3,400. Stipends and tuition for law candidates will be prorated according to the credits given for the research paper. Fellows must be citizens or nationals of the United States and degree candidates at a U.S. university. The application deadline for the awards, which are for a 12-month period beginning either September 1986 or January 1987, is March 15, 1986 and announcement of final selection will be on April 30, 1986. For information and application materials write: Hubert H. Humphrey Fellowship Program, Office of Public Affairs, U.S. Arms Control and Disarmament Agency, Washington, DC 20451.

Dated: January 28, 1986.

Joseph Lehman,

Director of Public Affairs.

[FR Doc. 86–2247 Filed 1–31–86; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 43-85]

Foreign-Trade Zone 14—Little Rock, AR; Application for Subzone; Polar Stainless Products Sink Plant: Searcy, AR

The period for comments on the above case, involving a request by the Little Rock Port Authority for a special-purpose subzone at the stainless steel sink manufacturing plant of Polar Stainless Products, Inc. in Searcy, Arkansas (50 FR 52350, 12/23/85) is extended to March 4, 1986, to allow interested parties additional time to comment on the proposal.

Comments are invited in writing during this period. Submissions shall include 5 copies. Materials submitted will be available at Import Administration Central Records Unit, U.S. Department of Commerce, Room B-099, 14th & Pennsylvania Ave., NW, Washington, DC 20230.

Dated: January 28, 1986.

John J. Da Ponte, Jr.,

Executive Secretary

[FR Doc. 86-2309 Filed 1-31-86; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-479-501]

Termination of Antidumping Duty Investigation; Certain Steel Wire Nails From Yugoslavia

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In a letter dated January 21, 1986, Atlantic Steel Company, Atlas Steel and Wire Corporation, Continental Steel Corporation, Davis-Walker Corporation, Dickson Weatherproof Nail Company, Florida Wire and Nail Company, Keystone Steel Wire Company, Northwestern Steel and Wire Company, Virginia Wire Fabric Company, and the Wire Products Company withdrew their antidumping petition filed on June 5, 1985, with respect to certain steel wire nails from Yugoslavia. Based on this withdrawal, we are terminating our investigation.

EFFECTIVE DATE: February 3, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Clapp of the Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-1769.

SUPPLEMENTARY INFORMATION:

Case History

On June 5, 1985, we received an antidumping duty petition filed with respect to certain steel wire nails from Yugoslavia. In compliance with the filing requirements of § 353.36 of our antidumping duty regulations (19 CFR 353.36), the antidumping duty petition alleges that imports of steel wire nails from Yugoslavia are being, or are likely to be, sold at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on June 25, 1985, and notified the International Trade Commission (ITC) of our action (50 FR 27479).

On July 22, 1985, the ITC determined that there is reasonable indication that imports of steel wire nails from Yugoslavia materially injure, or threaten material injury to, a U.S. industry (50 FR 31057). On November 20, 1985, we published an affirmative preliminary antidumping duty determination of sales at less than fair value with respect to steel wire nails (50 FR 47787). The notice stated that if the investigation proceeded normally, we would make our final antidumping duty determination by January 27, 1986.

Scope of Investigation

The products covered by the antidumping duty investigation are one-piece steel wire nails as currently provided for in the *Tariff Schedules of the United States, Annotated* (TSUSA), under item numbers 646.25 and 646.26, and similar steel wire nails of one-piece construction, whether at, over or under .065 inch in diameter as currently provided for in TSUSA item number 646.3040; two-piece steel wire nails currently provided for in TSUSA item 646.32; and steel wire nails with lead heads currently provided for in TSUSA item number 646.36.

Withdrawal of Petition

On January 21, 1986, we received a letter from the steel wire nail petitioners withdrawing their antidumping duty petition. A copy of petitioners' letter is appended to this notice. Under section 734(a) of the Act, upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation and after assessing the public interest as required by the Act. This withdrawal is based on a bilateral arrangement with the Government of Yugoslavia to limit the volume of imports of this product. We have taken into account the public interest factors set out in section 734(a)(2) of the Act and consulted with potentially affected producers, workers, consuming industries, and with the ITC. On the basis of our assessment of the public interest factors and our consultation, we have determined that termination is in the public interest. We have notified all parties to the investigation and the ITC of petitioners' withdrawal of the antidumping duty petition and our intention to terminate. For these reasons, we are terminating our antidumping duty investigation of steel wire nails from Yugoslavia.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

January 27, 1986.

Contains No Confidential Information
A-479-501

Total Number of Pages: 4

January 21, 1986.

Mr. Gilbert Kaplan,
Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20436

Attention: Central Records Unit B-099

Re: Certain Steel Wire Nails from Yugoslavia; Investigation No. A-479-501

Dear Mr. Kaplan: We have been advised by the United States Trade Representative ("USTR") that an Arrangement concerning trade in certain steel products has been entered into between the governments of Yugoslavia and the United States. Pursuant to this Arrangement, the government of Yugoslavia has agreed to restrain exports of certain steel wire nails for the period of the Arrangement.

The Arrangement requires the withdrawal of the petitions described in paragraph 1 of Appendix A to the Arrangement, including the antidumping duty (A-479-501) petition filed on June 5, 1985 by Atlantic Steel Co.,

Atlas Steel & Wire Corp., Davis Walker Corp., Dickson Weatherproof Nail Co., Florida Wire & Fabric Co., Keystone Steel & Wire Co., Northwestern Steel & Wire Co., Virginia Wire & Nail Co., and Wire Products Co. concerning certain steel wire nails.

Based on the stated purposes of the President's Steel Program, it is the present expectation of the Petitioners that the export ceilings in the Arrangement with Yugoslavia will be the functional equivalent of a suspension of an investigation under section 734(c) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979. This expectation assumes that the Arrangement, by removing "unfairly traded" Yugoslav steel wire nails, will ameliorate the effect of less than fair value sales and ensure that there will be no undercutting of domestic price levels by the authorized imports of steel wire nails from Yugoslavia.

With the foregoing considerations in mind, and in reliance on the understandings and conditions expressly set forth herein, you are hereby notified that the Petitioners withdraw the antidumping duty petition described in paragraph 1 of Appendix A. Please be advised that this withdrawal is subject to the following conditions:

1. Published assurance that the Yugoslav Arrangement is in full force and effect and subject to no contingency (whether expressed in the Arrangement or any modifications thereof by side letter or otherwise) that would revise, delay or impair the implementation of the specific restraints concerning steel wire nails.

2. The publication of this letter in the **Federal Register**, together with the termination notice and the assurances required as a condition to withdrawal.

3. Confirmation that the Arrangement with Yugoslavia is a "bilateral arrangement" within the meaning of Section 804 of the Steel Import Stabilization Act of 1984 and that the President is authorized to enforce the Arrangement pursuant to section 805(a) of said Act. Pursuant to those provisions and the requirements in the terms of the Arrangement, Petitioners further understand that the United States will prohibit entry into this country of steel wire nails from Yugoslavia that (i) are not accompained by an export certificate and (ii) are not consistent with the quantitative limitations specifically applicable to Yugoslavia as defined by the Arrangement.

Petitioners expect that the Arrangement with Yugoslavia will achieve the state purpose of being an equivalent or better alternative to the antidumping investigation that is being withdrawn as a consequence of the entry into force of the Arrangement. For so long as this expectation is realized, Petitioners do not intend to file petitions seeking import relief with respect to steel wire nails from Yugoslavia during the period the Arrangement with Yugoslavia is effective. Should that expectation fail to be realized, Petitioners will consider it their prerogative to file such petitions as they may determine to be appropriate under the trade laws. In any event, petitioners expressly do not waive any statutory right under the trade laws or the right to or take such other steps as may be provided by law.

Respectfully submitted,

David E. Birenbaum,

Counsel for Petitioners.

[FR Doc. 86-2308 Filed 1-31-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-489-501]

Postponement of Final Antidumping Duty Determinations; Certain Welded Carbon Steel Pipe and Tube Products From Turkey

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from a respondent in these investigations that the final determination be postponed until not later than 96 days after the date of publication of the preliminary determinations, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)); and that we have determined to postpone our final determinations as to whether sales of certain welded carbon steel pipe and tube products from Turkey (pipe and tube) have occurred at less than fair value until not later than April 9, 1986.

EFFECTIVE DATE: February 3, 1986.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-5288.

SUPPLEMENTARY INFORMATION: On August 9, 1985, we published a notice in the **Federal Register** (50 FR 32245) that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), antidumping duty investigations to determine whether imports of pipe and tube from Turkey were being, or were likely to be, sold in the United States at less than fair value. One September 11, 1985, the International Trade Commission determined that there is a reasonable indication that imports of these products are materially injuring a U.S. industry. On January 3, 1986, we published preliminary determinations of sales at less than fair value with respect to this merchandise (51 FR 235). The notice stated that if these investigations proceeded normally, we would make our final determinations by March 10, 1986.

On January 15, 1986, counsel for a respondent, which accounts for a significant portion of the merchandise covered by these investigations, requested that we extend the period for the final determinations until not later than 96 days after the date of publication of the preliminary determinations, in accordance with section 735(a)(2)(A) of Act. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published a notice of its preliminary determination, if exporters who account for significant portion of the merchandise which is the subject of the investigation request a postponement after an affirmative preliminary determination.

The respondent is qualified to make such a request since it accounts for a significant amount of exports of the merchandise under investigation. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, the Department will issue final determinations in these cases not later than April 9, 1986.

The public hearing is also being postponed until 10:00 a.m. on March 13, 1986, at the U.S. Department of Commerce, Room 1851, 14th Street and Constitution Avenue, NE., Washington, DC 20230. Accordingly, prehearing briefs must be submitted to the Deputy Assistant Secretary by March 7, 1986.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

January 27, 1986.

[FR Doc. 86-2307 Filed 1-31-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-517-501]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod From Saudi Arabia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod. The estimated net bounty

or grant is 5.48 percent *ad valorem* for all manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod.

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of carbon steel wire rod from Saudi Arabia that are entered, or withdrawn from warehouse, for consumption and to require a cash deposit on such entries equal to the estimated net bounty or grant of 5.48 percent *ad valorem*.

EFFECTIVE DATE: February 3, 1986.

FOR FURTHER INFORMATION CONTACT: Jack Davies or Barbara Tillman, Office of Investigation, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1785 or (202) 377-2438.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod. For purposes of this investigation, the following programs are found to confer bounties or grants:

- Government Loan to Hadeed.
- Preferential Provision of Equipment to Hadeed.
- Government Equity Infusions in Hadeed.

We determine that estimated net bounty or grant to be 5.48 percent *ad valorem* for all manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod.

Case History

On June 12, 1985, we received a petition in proper form from Atlantic Steel Company, Georgetown Steel Corporation, North Star Steel Texas, Inc., and Raritan River Steel Company filed on behalf of the U.S. industry producing carbon steel wire rod. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod receive bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds for initiating a countervailing duty investigation, and on July 2, 1985, we initiated the investigation (50 FR 28231). We stated that we expected to issue our preliminary determination by September 5, 1985.

Since Saudi Arabia is not a "country under the Agreement" within the meaning of section 701(b) of the Act, sections 303(a)(1) and 303(b) apply to this investigation. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of the subject merchandise from Saudi Arabia materially injure, or threaten material injury to, a U.S. industry.

On July 12, 1985, we presented a questionnaire to the Embassy of Saudi Arabia in Washington, DC and requested that the response be submitted by August 12. We presented a supplemental questionnaire on August 19 and requested a response by October 1.

On August 6, we determined that this case is extraordinarily complicated due to the complexity of the alleged subsidy practices and the novelty of the issues presented; we also determined that the government of Saudi Arabia and other parties concerned were cooperating with this investigation. Therefore, we postponed our preliminary countervailing duty determination until not later than November 12 (50 FR 32751).

On October 1, we received responses to our questionnaires from the government of Saudi Arabia and the Saudi Iron and Steel Company (Hadeed). On the basis of the information contained in these responses, we made a preliminary affirmative countervailing duty determination on November 12 (50 FR 47788).

From November 23 through December 4, we verified the responses of the government of Saudi Arabia and Hadeed in Saudi Arabia.

In response to a November 27 request from respondents and a December 2 request from petitioners, we held a public hearing concerning this investigation on December 20. We received pre-hearing briefs on December 17 and post-hearing briefs on January 2, 1986.

Respondents filed a supplemental response incorporating verified information on January 3, 1986.

Scope of Investigation

For purposes of this investigation, the term carbon steel wire rod covers a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. Wire rod is currently classifiable under items 607.14, 607.17, 607.22, and 607.23 of the *Tariff Schedules of the United States* (TSUS).

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 F.R. 18006).

For purposes of this final determination, the period for which we are measuring bounties or grants, the review period, is the 1984 company fiscal year (January 1–December 31, 1984). Hadeed is the only producer in Saudi Arabia exporting carbon steel wire rod to the United States during the review period.

In response to a specific allegation, we have examined whether government equity infusions in Hadeed were made on terms inconsistent with commercial considerations. We have addressed this allegation in the section below on "Government Equity Infusions in Hadeed."

Based upon our analysis of the petition, the responses submitted by the government of Saudi Arabia and Hadeed to our questionnaires, our verification, and the written and oral comments made by the interested parties, we determine the following:

I. Programs Determined To Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod under the following programs:

A. Government Loan to Hadeed

Although not specifically alleged by petitioners, evidence in the petition indicated that Hadeed might have received loans on terms inconsistent with commercial considerations from the Saudi Industrial Development Fund (SIDF) or from other government agencies. In its response, Hadeed reported that it had not received any loans from SIDF but had received a loan from the Public Investment Fund (PIF).

The PIF was established in 1971 as one of the five specialized credit institutions set up by the Saudi government. The other specialized credit

institutions are the above-mentioned SIDF, the Saudi Agricultural Bank, the Saudi Credit Bank, and the Real Estate Development Fund. The PIF is funded completely by the Saudi government. The PIF and the other specialized credit institutions are the only sources of long-term financing in Saudi Arabia.

According to its by-laws, the PIF can lend to commercially productive projects in which the Saudi government has some equity participation. There are no legal limitations on the project size or types of products to which PIF can lend. PIF began making loans in 1973 to PETROMIN projects involving products in short supply domestically and to Saudia Airlines for development of the areas served by the airline. Since 1973, a number of loans have been made from the PIF, primarily to PETROMIN, Saudia Airlines, and the Saudi Basic Industries Corporation (SABIC). (SABIC, a part owner of Hadeed, was wholly-owned by the government from its founding in 1976 through early 1984, when SABIC issued new stock and became 70 percent government owned and 30 percent privately owned.) These PIF loans have been used to finance such products as fertilizers, plastics, commercial air transportation, pipelines, steel, construction, petrochemicals, chemical gases, electricity, and refined petroleum products.

In determining whether PIF loans are provided to a specific enterprise or industry, or group of enterprises or industries, we have reviewed PIF's lending activities since its inception. We find that, despite the number of products which have received PIF financing, these loans are given predominantly to finance projects undertaken by PETROMIN, Saudia Airlines, and SABIC. Since 1978, PIF loans have gone exclusively to these three companies' projects. Therefore, we determine that PIF loans are provided to a specific group of enterprises in Saudi Arabia, and that the PIF loan to Hadeed is countervailable to the extent that it is given on terms inconsistent with commercial considerations.

The PIF loan to Hadeed was part of the initial investment package for constructing its direct reduction plant, steel making plant, and rolling mill at Jubail. The PIF loan comprised 60 percent of Hadeed's total capitalization. Repayment of the principal on the loan will begin in 1989, 5.5 years after the October 1983 startup of production at Hadeed. After startup, the service charge on the loan varies according to the rate of return on investment in a given fiscal year. Hadeed did not make a profit during the review period and, therefore, did not pay any service charge on the PIF loan in that period.

In order to determine whether the PIF loan to Hadeed was made on terms inconsistent with commercial considerations, we examined information pertaining to the two primary sources in Saudi Arabia of medium-term (from one to five years) and long-term (over five years) financing: the Saudi commercial banking system and the Saudi government specialized credit institutions.

At verification, we found that Saudi commercial banks are limited in their ability and willingness to make long-term loans. Since interest obligations on loans cannot be enforced in Saudi courts, and because the Saudi government limits the amount of funds which Saudi commercial banks can loan to any one individual or legal entity, Saudi commercial banks cannot lend large amounts of funds over a long period of time for large scale industrial construction projects. We did find, however, that Saudi commercial banks have in recent years started to provide financing for periods of three to seven years to cover the working capital needs of newly constructed industrial and manufacturing companies.

Long-term financing in Saudi Arabia is available from the five specialized credit institutions created by the Saudi government as discrete credit windows for lending government funds in Saudi Arabia: the PIF, the SIDF, the Saudi Agricultural Bank, the Real Estate Development Fund, and the Saudi Credit Bank. Because Islamic law prohibits interest, these institutions cannot and do not charge any interest on their loans. Of these institutions, only the PIF and SIDF provide funding to industrial or manufacturing projects.

At verification, we found that the SIDF was established in 1974 to provide loans to small- and medium-sized private industries. The SIDF is funded by the government, but, since 1980, loan repayments have been adequate to cover loan disbursements, and, thus, no new government funds have been needed.

The SIDF can make loans for up to 15 years to any licensed company in Saudi Arabia which is at least 25 percent domestically owned and which has some private Saudi ownership. The level of financing available is commensurate with the level of domestic ownership. For projects in which domestic ownership constitutes 50 percent or more of total equity, the maximum SIDF loan amount is 50 percent of the total project costs. During the first 10 years of its operations, the SIDF approved loans for 843 projects located in every region of Saudi Arabia, involving numerous industrial sectors including consumer products, chemical products, cement, building materials, and engineered products. These loans were provided to approximately 600 companies.

Based on this information, we find the SIDF loans are available to and are used by a wide variety of industries located throughout Saudi Arabia. Therefore, we determine that SIDF loans are not provided to a specific enterprise or industry, or group of enterprises or industries.

Using the two sources for medium- to long-term financing in Saudi Arabia, the commercial banks and the SIDF, we have constructed a composite benchmark to determine whether the PIF loan to Hadeed is on terms inconsistent with commercial considerations. Since the PIF loan covered 60 percent of Hadeed's total project costs, the benchmark was constructed under the assumption that Hadeed could have financed 50 percent of its total project costs with an SIDF loan (the maximum eligibility for a company with 50 percent Saudi ownership) and the remaining ten percent of project costs with a Saudi commercial bank loan. The SIDF loan was used because, of all of the specialized credit institutions, it is the only fund besides the PIF which lends to industrial or manufacturing projects and, thus, is most representative of what Hadeed would otherwise have had to pay for long-term loans in Saudi Arabia. We used the maximum feasibility fees and average follow-up fees applied to SIDF loans. The commercial bank portion of the benchmark was based on the fees paid by Hadeed on its medium-term commercial bank loan, including an average of the various bank fees charged to service the loan and the average 1984 commission fee. We compared this composite benchmark loan to the terms of the PIF loan taken out by Hadeed. On this basis, we determine that the PIF loan is on terms inconsistent with commercial considerations.

To calculate the benefit to Hadeed, we applied the benchmark loan terms to the total amount of PIF funds drawn down by Hadeed as of the end of the review period. Since Hadeed did not pay any service charges on the PIF loan during the review period, the net benefit to Hadeed during the review period consisted of the entire benchmark loan charges. We divided the benchmark loan charges by the value of Hadeed's sales for the review period to arrive at an estimated net bounty or grant of 4.91 percent *ad valorem*.

B. Preferential Provision of Equipment to Hadeed

Petitioners alleged that the government of Saudi Arabia, through the Royal Commission for Jubail and Yanbu, provides infrastructure benefits, such as roads, ports, low-cost utilities, training centers, and plant sites, to specific enterprises and industries located in Jubail and Yanbu.

As discussed in section II.A below, we have determined that the provision of basic infrastructure has not conferred a bounty or grant on the production or export of carbon steel wire rod from Saudi Arabia. Nevertheless, we have also examined whether the government has provided any specific benefits in Jubail to the carbon steel wire rod industry.

Under a lease/purchase arrangement, the Royal Commission for Jubail and Yanbu built for Hadeed two bulk ship unloaders at the Jubail industrial port for unloading iron ore, and constructed a conveyor belt system for transporting iron ore from the pier to Hadeed's plant in the Jubail Industrial Estate. When construction of these facilities was completed in 1982, the Royal Commission transferred custody to Hadeed under the lease/purchase agreement.

As originally planned, the bulk ship unloader and coneyor system was built to serve both Hadeed and an adjacent plant in the Jubail Industrial Estate. The second plant was not built, however, leaving Hadeed as the sole user of this equipment.

Under the terms of the lease/purchase agreement, Hadeed must repay the equipment and construction costs plus a two percent fee for cost of money in annual installments over a 20-year period. The annual payments are stepped, with the lowest payment levels occurring at the beginning and the highest payment levels occurring at the end of the 20-year period.

At verification, we found that the Royal Commission had built a urea berthside handling system at the Jubail industrial port for the exclusive use of another company located in the Jubail Industrial Estate. The lease/purchase agreement on the berthside handling system called for equal annual repayments covering equipment and construction costs and a two percent fee for cost of money. We also found that the two percent cost of money fee was the standard Royal Commission charge for recovery of costs on other facilities, such as the pipeline corridor, the seawater cooling system, and the industrial potable water plant, which were built by the Royal Commission in the Jubail Industrial Estate.

Of the projects examined, the urea berthside handling system was the most comparable to Hadeed's ship unloader and conveyor system. Therefore, we have compared the repayment schedule for Hadeed's ship unloader and conveyor system to the repayment schedule for the berthside handling system to see whether the ship unloader and conveyor system was provided on preferential terms. Although both agreements carried the standard Royal Commission cost of money fee, Hadeed's end-loaded, stepped repayment schedule was more advantageous than the annuity style repayment schedule on the berthside handling system. We determine, therefore, that Hadeed's ship unloader and conveyor system was provided on preferential terms. Moreover, because the equipment is used exclusively by Hadeed, we find that it is provided to a specific enterprise and, thus, confers a bounty or grant.

In order to calculate the benefit, we compared the principal and fees being paid in each year by Hadeed to the principal and fees that would be paid under the repayment schedule used for the berthside handling system. We allocated the sum of the present values of the differences in the two repayment schedules over 20 years, using a two percent discount rate. The resulting benefit for the review period was divided by the value of Hadeed's sales during the review period to arrive at an estimated net bounty or grant of 0.04 percent *ad valorem*.

C. Government Equity Infusions in Hadeed

Petitioners alleged that the government of Saudi Arabia, through the SABIC, provided equity to Hadeed on terms inconsistent with commercial considerations. Petitioners argued that the lack of commercial viability of the steel mill investment is demonstrated by the fact that SABIC assumed a 90 percent equity participation share in Hadeed, whereas SABIC's joint venture projects are usually structured with 50 percent SABIC equity and 50 percent foreign equity. In Hadeed's case, petitioners argued that no foreign investor was willing to assume a 50 percent equity share because such an investment would not have been commercially sound.

We have consistently held that government provision of equity does not *per se* confer a subsidy. Government equity infusions bestow countervailable benefits only when they occur on terms inconsistent with commercial considerations. When there is no market-determined price for equity, it is necessary to determine whether the company is a reasonable commercial investment (*i.e.*, equityworthy). Since there are no market-determined prices for equity in Hadeed, we must determine whether Hadeed is equityworty.

We examined two equity infusions by SABIC in Hadeed: the 1979–1983 cash infusions made by SABIC pursuant to its contractual agreements to fund the construction of Hadeed, and the 1982–1983 acquisition by Hadeed of SABIC's shares in the Steel Rolling Company (SULB).

During the 1979–1983 period when these infusions took place, SABIC itself was wholly-owned by the Saudi government. Its Board of Directors consisted of three government ministers and three private individuals appointed by the government. We find, therefore, that the equity infusions by SABIC in Hadeed during this period represented infusions of government funds into Hadeed.

At verification, we found that the amount of equity participation in Hadeed and other SABIC joint venture projects was negotiated between the partners. SABIC's intention was to negotiate equity participation in a given joint venture commensurate with each partner's contribution to the project of required industrial technology, domestic and export marketing skills, experience in the industry, and training capabilities. Purchases of equity by SABIC and the other joint venture partners were found to have been made on the same terms and conditions.

As part of their initial investment analysis of the Hadeed joint venture project and as required in obtaining an industrial license and PIF funding, SABIC and Korf Stahl, the foreign partner in the Hadeed joint venture, commissioned the World Bank to conduct feasibility studies, first on the proposed direct reduction plant and billet mill (completed February 1979), and later on the proposed rolling mill (completed June 1980). Based on our analysis of these feasibility studies, we preliminarily determined that Hadeed had been equityworthy since its inception in 1979.

On the basis of the 1979 and 1980 World Bank studies, SABIC decided to invest in the Hadeed project and entered into joint venture agreements in 1979 and in 1981. The 1979 PIF loan on the original billet mill and the subsequently consolidated PIF loan on the expanded Hadeed project called for staged disbursements of PIF construction funds of a 2 to 1 basis with

disbursements of Hadeed equity capital during the construction period. Furthermore, negotiated agreements between SABIC and its joint venture partners in the Hadeed project called for periodic increases in Hadeed's authorized capital over the 1979–1983 period to meet construction costs. All of these cash infusions by SABIC consisted of cash contributions in return for new shares of Hadeed stock. All cash infusions by SABIC between 1979–1983 were made pursuant to the 1979 and 1981 joint venture agreements. These infusions were matched on a proportional basis by the other joint venture partners until a predetermined cap on their paid-in capital was reached. Therefore, we determine that the investment decisions made in 1979 and 1981 by SABIC to provide equity to Hadeed during the 1979–83 period were not made on terms inconsistent with commercial considerations.

In December 1982, SABIC decided to transfer its shares in SULB to Hadeed in return for new Hadeed stock. SABIC acquired majority ownership of SULB in 1979 and purchased all of SULB's stock in 1982. SULB has produced steel reinforcing bars using imported billets at its Jeddah rolling mill since the mid-1960's. SULB currently obtains its billets from Hadeed and has no facilities for producing carbon steel wire rod.

The stock transfer, through which SULB became a wholly-owned subsidiary of Hadeed, represented a new investment decision distinct from the decision to construct Hadeed's facilities in Jubail. Therefore, an analysis of the sale of SULB to Hadeed must be based on information available as of December 1982. One of the key indicators used in the World Bank studies of the Hadeed project was the world price of steel reinforcing bars. We examined these price levels, as reported in the *Metals Bulletin*, for the 1979–1985 period. We found that by late 1982 actual world prices had decreased significantly from their levels in 1979 and 1980, when the World Bank studies were conducted. Because of the trend in prices from 1980 through 1982, we find that a reasonable investor would not have relied on these studies for the 1982 SULB investment decision.

Furthermore, the declining world price levels would have made it appear doubtful in late 1982 that prices, during years in which Hadeed would be operating, would reach the level necessary to generate a sufficient rate of return on equity over the life of the project. Therefore, we determine that the transfer of SABIC's shares in SULB to Hadeed in exchange for additional shares in Hadeed was inconsistent with commercial considerations.

To determine the benefit to Hadeed from the acquisition of SULB, we used the rate of return shortfall methodology. We determined the amount of the equity infusion to be the net book value of SULB's equity at the time of the transfer. As best available information on the national average rate of return on equity in Saudi Arabia, we used the 1983 annual average rate of return on U.S. direct investment in Saudi Arabia. This information, the most recent data publicly available from the U.S. Commerce Department's Bureau of Economic Analysis, revealed that the 1983 rate of return was 5.4 percent. We computed the rate of return shortfall by taking the difference between this figure and the 1984 rate of return on equity in Hadeed. We multiplied the rate of return shortfall by the net book value of SULB's equity, and divided the resulting figure by the total value of Hadeed's and SULB's consolidated sales in 1984 to arrive at an estimated net bounty or grant of 0.53 percent *ad valorem*.

II. Programs Determined Not To Confer Bounties or Grants

We determine that bounties or grants are not being provided to manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod under the following programs.

A. Basic Infrastructure in Jubail and Yanbu

Petitioners alleged that the government of Saudi Arabia, through the Royal Commission for Jubail and Yanbu, provides infrastructure benefits, such as roads, ports, low-cost utilities, training centers, and plant sites, to specific enterprises and industries located in Jubail and Yanbu.

We have consistently held that government activities such as these constitute bounties or grants only when they are limited to a specific enterprise or industry, or group of enterprises or industries. Moreover, we have held that where limitations on use do not result from government activities, but instead result from the inherent characteristics of the good or service being provided, the government action does not confer a countervailable bounty or grant.

Basic infrastructure facilities are, by their very nature, available only for use by companies and individuals located in the vicinity of such facilities. Roads, ports, and training centers established in a given location obviously benefit those located in that area more than they benefit firms and individuals located in other areas. Nevertheless, this does not mean that those located in close proximity to the infrastructure are receiving countervailable bounties or grants. The provision of basic infrastructure does not confer a countervailable bounty or grant when the following three conditions are met: (1) The government does not limit who can move into the area where the infrastructure has been built, (2) the infrastructure that has been built is in fact used by more than a specific enterprise or industry, or group of enterprises or industries, and (3) those that locate there have equal access or receive the benefits of the infrastructure on the basis of neutral criteria.

At verification, we found that, in addition to Jubail and Yanbu, there are eight other industrial estates in Saudi Arabia which were developed over time through the joint efforts of a number of individual Saudi government agencies and which are administered by the Ministry of Industry and Electricity.

We visited one of these eight industrial estates, the Second Riyadh Industrial Estate. We found that this estate contained a number of industries engaged in manufacturing a variety of products, such as electrical transformers, cement, food processing, clothing, furniture, and diapers, and in providing a variety of services, such as printing, advertising, and transportation. The estate is being developed in phases, with the first phase completed in 1980 and the second phase in 1985. During our tour of the estate, we saw large plots of land as yet undeveloped or under construction. Finally, we saw that the estate had a number of infrastructure facilities, including potable and industrial water treatment plants, an electrical power plant, a fire department, a hospital, and an administrative center. The Ministry of Industry and Electricity administers the overall estate, with other government agencies in charge of certain infrastructure facilities.

The Jubail and Yanbu industrial estates were planned during the oil boom years to take immediate advantage of the natural gas feedstock available in Saudi Arabia and to develop expeditiously new harbors needed for oil and gas exports. To meet this need, the Royal Commission for Jubail and Yanbu was established to centralize and expedite the planning and construction of the Jubail and Yanbu estates in a relatively short period of time. As these two industrial estates have become operational, various functions of the Royal Commission have been moved into the regular government agencies in charge of administering the other eight estates.

We toured the Jubail Industrial Estate during the verification visit and found that a variety of industries are located there that manufacture products such as structural steel, petrochemicals, fertilizers, heavy equipment, industrial use oxygen and nitrogen gases, air conditioning units, and cement. In addition, numerous support industries are located there that are engaged in many different production and service activities such as heavy equipment maintenance and sale, lumber yard sales, soil testing laboratories, clothing manufacturing, printing, and green house nursery sales and services. We also saw a number of infrastructure facilities, including a hospital, a fire station, a seawater cooling system, an electrical power plant, a desalination plant, a pipeline corridor, and the industrial port facilities. We found that the Jubail Industrial Estate is being developed in stages, starting with the primary industries and proceeding to the light manufacturing and secondary industries. There also are large tracts of land in the estate which are either undeveloped or under construction.

We held discussions with officials of the Ministry of Industry and Electricity and the Royal Commission, and examined documents concerning the procedures for obtaining industrial licenses, plant site permits, and commercial registrations. The location of an enterprise is determined by the industrial licensing procedure administered by the Ministry of Industry and Electricity. We found that the Ministry has approved industrial licenses to all types of enterprises and industries located in all areas of the Kingdom, both inside and outside the ten industrial estates. We found no evidence that the Ministry has denied or limited the entry of any enterprise or industry into any particular region or industrial estate in Saudi Arabia.

At Jubail, we examined utility service request forms containing the terms and conditions for receiving potable and industrial water, for disposal of sewage and industrial waste, for use of the seawater cooling system, and for use of other infrastructure facilities available in the Jubail Industrial Estate. We found no evidence that any of the primary, light, or support industries in Jubail has been or is being prohibited from using any of the infrastructure facilities in Jubail. We found that the only factors which limit use of the infrastructure facilities in Jubail relate to the technological parameters of the enterprise and its need for and ability to use the facilities. We also ascertained that a wide variety of enterprises and industries use the infrastructure in Jubail.

Finally, we found that the infrastructure in Jubail is available on equal terms for use by all companies and industries locate in that industrial estate. In section II.B below, we discuss the land rental rates and utility rates on water, electricity, and gas available in Jubail and compare these rates to those available in the other industrial estates.

Based on this information, we determine that the Saudi government does not limit who can locate in any of the industrial estates, including Jubail, and that the basic infrastructure built by the government in Jubail is not countervailable as a regional bounty or grant. When a government decides to build industrial cities, industrial estates, or any other type of infrastructure, the government activity is necessarily limited to those sites. To treat this activity as a regional bounty or grant would not be reasonable. Under such logic, the government would have to develop every square foot of the country equally or undertake no development at all in order to avoid providing regional bounties or grants. We cannot accept this interpretation. Insofar as the government does not limit which industries can locate in these areas, and does not apply different criteria for infrastructure use in different areas, then there is no governmental limitation on companies in specific regions. The only limitation is due, again, to the inherent characteristics of the infrastructure. Therefore, we determine that the provision of basic infrastructure in Jubail is not limited to an enterprise or industry, or group of enterprises or industries in a specific region.

Moreover, because restrictions on the use of the infrastructure stem from the inherent nature and location of the facilities and not from any activity or action of the government of Saudi Arabia, and because the infrastructure is provided on equal terms to, and is used by, a wide variety of industries, we determine that the infrastructure in Jubail is not limited to a specific enterprise or industry, or group of enterprises or industries within the meaning of section 771 (5) (B) of the Act.

B. Special Benefits to the Manufacturing Sector in Saudi Arabia

Petitioners alleged that the "manufacturing sector" in Saudi Arabia represents a "group of industries" targeted for development and provided with special incentives under the Law for the Protection and Encouragement of National Industries in the Kingdom of Saudi Arabia. These special incentives include: (1) Duty exemptions on imports of machinery, tools, equipment, spare parts, raw materials, and packaging; (2) provision of water, electricity, and gas at very low rates; and (3) land at nominal rent for factories and employee housing.

To determine whether these incentives confer a bounty or grant, we must first determine whether the manufacturing sector in Saudi Arabia constitutes a "group of industries" as alleged by petitioners.

In order to establish a manufacturing facility in Saudi Arabia, a company must obtain an industrial license. As explained in the previous section, the Ministry of Industry and Electricity administers the licensing procedure. The Ministry does not limit or specify which industries may apply for an industrial license, and at verification, we found that the Ministry has approved licenses for hundreds of companies representing a wide range of industries including the food, textile, pulp and paper, wood products, petrochemical, pharmaceutical, rubber, steel, fabricated metal, machinery and equipment, electrical appliance, and furniture industries. The number and diversity of manufacturing concerns which have received industrial licenses demonstrate that the manufacturing sector in Saudi Arabia does not represent a mere "group of industries" as alleged by petitioners.

Moreover, we determine that industries or firms within the manufacturing sector do not receive preferential treatment under the incentives authorized by the Law for the Protection and Encouragement of National Industries in the Kingdom of Saudi Arabia.

With respect to the first incentive (duty exemptions on imports of machinery, tools, equipment, spare parts, raw materials and packaging), we found that all companies with industrial licenses may apply for duty exemptions by submitting invoices to the Ministry of Industry and Electricity. The exemptions are authorized under Article 4 (for production machinery) and Article 5 (for raw materials) of the Law for the Protection and Encouragement of National Industries. At verification, we found that duty exemptions were granted to hundreds of companies for a variety of products, including spare parts, light bulbs, insulated wire, cable packing, and laboratory equipment. In a very few cases, the exemption was denied. In the few cases where the exemption was denied, the stated reasons were that all exempted goods must be used in the company's production process, there was sufficient

local supply of the good, or the good was not a "raw material."

To receive an exemption, companies apply in advance of importation and are assigned a total exemption amount based on the stated value of the imports and the applicable duty rates. The exemption remains in effect for a specified time period. The holder of the exemption exhausts it by presenting invoices showing actual value of the goods and the applicable duty. The company must reapply once its exemptions are exhausted. We found that Hadeed's duty exemptions did not exceed the amount of duty payable on the imported goods as specified in the Saudi Arabian tariff schedules.

Based on this information, we determine that the duty exemptions under Articles 4 and 5 are not limited within the manufacturing sector to a specific enterprise or industry, or group of enterprises or industries, and, thus, do not confer a bounty or grant. We also determine that Hadeed's duty exemptions did not result in a bounty or grant because they did not exceed the amount of duty payable on the imported goods.

With respect to the second alleged incentive (provision of water, electricity and gas at very low rates), we found at verification that companies (including Hadeed) located within the industrial estates have equal access to, and pay the standard Kingdom-wide rates for industrial users for, electricity, water (including sewage) and other services. In the Jubail Industrial Estate, companies pay the standard Kingdom-wide rates except on those infrastructure facilities where extra cost recovery charges are added to the Kingdom-wide rate by the Royal Commission. In addition, all customers purchasing gas from the Master Gas System (MGS) pay the same flat rate per million BTU.

The MGS is a gas purification and pipeline system which was originally developed to transport natural gas from the oil fields to gas processing plants and then to port facilities for export. The MGS has since been extended to serve Saudi industrial projects. MGS does not serve households. Officials of the Arabian American Oil Company (Aramco), which operates the MGS under a concession from PETROMIN, told us that the location of the gas system is dictated primarily by the location of a large chain of oil fields in the Eastern Province and by the ports on the Arabian Gulf which are equipped to export liquified natural gas.

Aramco builds secondary transmission lines from the MGS system to its industrial customers at no charge to the customers. Aramco will consider any request regardless of the potential customer's distance from the system if the customer can obtain a right-of-way and if the hookup makes economic sense; that is, it may be uneconomical to build a long transmission line to a small customer, since Aramco recoups its costs only through its monthly gas consumption charges.

As stated in the preliminary determination, we consider that the provision of water, electricity or gas, like the building of infrastructure facilities, cannot be considered countervailable unless the government limits which industries can use the water, electricity, and gas, or unless the government does not provide equal access to the services or does not provide the service to all users on the basis of neutral criteria.

As noted above, we verified that the government has not limited, either *de jure* or *de facto*, which companies or industries are part of the manufacturing sector, or which companies or industries may locate in industrial estates. Furthermore, all companies have equal access to the water, electricity and gas services provided in their respective industrial estates. Finally, all companies (including Hadeed) in all industrial estates pay the same rate for their water, electricity, and gas services. Therefore, since the provision of these services is not limited to a specific enterprise or industry, or group of enterprises or industries, and since Hadeed has not received these services at rates that are preferential to those charged to other companies, we determinie that the provision of gas, water, and electricity does not confer a bounty or grant on the product under investigation.

With respect to the last incentive (land at nominal rents), we verified that the government, which owns all the land in the industrial estates, charges the same rental rate to all companies in all industrial estates. Since the government has neither limited which companies or industries constitute the manufacturing sector, nor limited which companies or industries can locate in the industrial estates, and since all companies (including Hadeed) which rent government-owned land pay the same rental rate, we also determine that the rental rates for land do not confer a bounty or grant.

C. Certain Tax Benefits to Hadeed

Petitioners alleged that SABIC, as a government agency, is exempt from the obligation to pay Zakat, a religious tax for which all Saudi corporations are liable.

At verification, we learned that a corporation's Zakat liability is based on its net worth at the end of the year. For joint ventures with foreign partners, the Zakat liability attaches only to the Saudi-owned portion of the company's equity. The foreign partner pays income tax, not Zakat, on its pro-rata share of the joint venture's net profits at a progressive rate from 25 to 45 percent. Moreover, under Article 7 of the Foreign Capital Investment Law, there is a 10-year income tax holiday for industrial projects with foreign capital. This tax holiday applies only to income taxes that would be owed by foreign owners. It does not apply to the Zakat liability of the Saudi owners.

At verification, we reviewed a letter from the Ministry of Zakat and Income Tax to SABIC stating that SABIC is liable for Zakat owing to its part ownership of Hadeed. SABIC requires its affiliates, including Hadeed, to pay their individual Zakat liabilities and reimburses them. We found that Hadeed had paid the Zakat attributable to SABIC's share of its net worth, and that SABIC had reimbursed Hadeed for that amount.

We also sought to find out whether the foreign shareholding in Hadeed diminishes SABIC's Zakat obligation. Examination of the Zakat regulations and discussions with SABIC's accountants revealed that SABIC's Zakat obligation attaches to 100 percent of the shares it owns in Hadeed. SABIC's Zakat liability is not determined based on the total equity in Hadeed, but only on that portion of Hadeed's equity owned by SABIC. Therefore, SABIC's Zakat obligation is not diminished or otherwise affected by the amount of foreign ownership in Hadeed.

Because SABIC was not exempted from its Zakat obligation during the review period, we determine that Hadeed received no bounty or grant with respect to Zakat.

With regard to the income tax holiday for foreign owners, we verified that Hadeed's German owner was eligible for the tax holiday during the review period. However, since Hadeed was not profitable during its first year of production, there was no income tax liability. Therefore, even if this program could confer a benefit on Hadeed, it was used.

III. Programs Determined Not To Be Used

Based on our verification, we determine that manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod did not use the

following programs which were listed in our notice of initiation.

A. Special Benefits to Joint Ventures in Saudi Arabia

Petitioners alleged that Hadeed, a 90 percent Saudi-owned joint venture, enjoys benefits under the Foreign Capital Investment Code and the Saudi Arabian Tenders Regulations which are not available to other joint venture enterprises with lower percentages of Saudi ownership. Petitioners contend that various equity "participation" levels define "groups of industries." The alleged benefits consist of income tax holidays, government procurement preferences, exemptions from posting of tender and performance bonds, and exemptions from payment retentions. The allegation on income tax holidays was discussed in section II.C above.

We preliminarily determined, based on statements in the responses, that Hadeed did not use these programs. At verification, we found that Hadeed did not sell to the Saudi government or any quasi-governmental organization during the review period, and therefore did not take advantage of the preference available to Saudi individuals and businesses under the government procurement code. We also ascertained that the procurement code contains no provisions exempting any government contracts from certain payment retention or performance bond requirements. The code provides that the requirement of a final performance bond of 5 percent of the contract price may be waived if the subject of the contract is consulting work, direct purchase, or purchase of spare parts. However, since Hadeed did not sell to the government, it did not take advantage of this waiver provision.

We, therefore, determine that alleged exemptions from bonding and payment retention and procurement preferences do not confer a bounty or grant because Hadeed did not use them during the period of review.

B. SABIC Loan Guarantees to Hadeed

Petitioners alleged that SABIC may have provided loan guarantees to SULB, a subsidiary of Hadeed.

At verification, we examined the financial statements of Hadeed and SULB and correspondence with SULB's major creditors and found that neither SULB nor Hadeed had received loan guarantees from SABIC. We, therefore, determine that loan guarantees were not used by Hadeed or its subidiary during the period of review.

Petitioners' Comments

Comment 1: Petitioners contend that PIF lending is limited by statute to a specific group of industries: those owned wholly or partly by the government. In practice, the requirement of government ownership assures that PIF loans are extended only to those industries which further government policies. Furthermore, PIF loans also have been limited to industries which are based on Saudi Arabia's oil and natural gas resources.

DOC Position: As discussed above, we determined that PIF loans are limited to projects undertaken by a specific group of enterprises, PETROMIN, Saudia Airlines and SABIC. Therefore, we do not reach the issue of whether "firms in which the government has an equity position" or "industries based on oil and natural gas resources" constitute a specific enterprise or industry, or group of enterprises or industries.

Comment 2: Petitioners contend that the Department should reject respondents' argument that the specialized credit institutions administered by the Saudi government be considered jointly in determining whether PIF loans are provided to a specific enterprise or industry, or group of enterprises or industries. The precedents cited by respondents are inapposite, in petitioners' view.

DOC Position: We have not aggregated the activities of the Saudi government specialized credit institutions in evaluating whether PIF loans are provided to a specific enterprise or industry, or group of enterprises or industries. See DOC position to respondents' Comment 1.

Comment 3: Petitioners argue that, in measuring the benefit conferred by Hadeed's PIF loan, the commercial considerations standard in section 771(5)(B)(i) of the Act requires a commercially-determined benchmark rate. The Department's reliance on SIDF rates in constructing a benchmark is inappropriate because the SIDF program is non-commercial. SIDF loans are restricted to ventures with all least 25 percent Saudi ownership, projects which are capital or power intensive, and projects which offer opportunities for employing and training Saudi citizens. Furthermore, the granting of SIDF loans is discretionary, and the fees charged are so low that they flout commercial considerations. The appropriate commercial benchmark, in petitioners' view, would be the fee charged on the one medium-term loan received by Hadeed from commercial banks, adjusted upward to reflect the large amount and longer terms of the PIF loan. Alternatively, use of an international benchmark would be consistent with *Cabot Corp.* v *United States*, Slip Op 85--102 (C.I.T., Oct. 4 1985) (Cabot).

DOC Position: In countries where long-term loans or the terms of long-term financing are controlled by the government, it has been the Department's practice to use direct government loans as benchmarks when those loans are provided to more than a specific industry or group of industries (*see, e.g., Cold-Rolled Carbon Steel Flat-Rolled Products from Korea*, 49 FR 47284, and *Certain Textile Mill Products and Apparel from Colombia*, 50 FR 9863). In our view, this benchmark is the best measure of the benefit to the recipient of the subsidized loan because it reflects what the recipient would otherwise have paid for a comparable loan.

The "commercial" benchmark suggested by petitioners would not be an appropriate measure of what Hadeed would otherwise pay. The commercial banking sector in Saudi Arabia is not sufficiently capitalized to supply a loan of the magnitude of the PIF loan. Nor would we use world market interest rates to measure the cost of borrowing riyals in Saudi Arabia.

As discussed above, we found that SIDF loans have been available to, and used by, a wide variety of Saudi industries. We do not consider that the 25 percent minimum Saudi ownership requirement or the domestic materials and training provisions constitute or define a specific enterprise or industry, or group thereof. Furthermore, while SIDF may have diminished its lending to certain sectors, we did not find any evidence that SIDF has channeled its lending into any specific enterprise or industry, or group thereof.

Finally, in light of the Court of International Trade's decision in Carlisle Tire & Rubber Co. v. *United States* (564 F. Supp. 834 (CIT 1983)) (Carlisle), we are not following the standard adopted by the Court in *Cabot*.

Comment 4: Beyond the use of the SIDF rate, petitioners raise two specific objections to the composite used by the Department for the PIF loan to Hadeed. First, the rate on the commercial bank loan received by Hadeed is too low because it does not reflect the risk inherent in lending a large sum of money. Second, the fact that SIDF financing is available for up to 50 percent of the project cost does not justify a 50 percent weight for the SIDF component of the benchmark.

DOC Position: We disagree with both points. With respect to the charge assigned to the commercial loan

component of the benchmark, the incremental financing needed by Hadeed would not exceed the amount of the loan Hadeed has already received from commercial banks. Therefore, no upward adjustment to that charge is warranted. With respect to the second point, the level of Saudi ownership in Hadeed exceeds 50 percent. Therefore, Hadeed would be entitled to borrow 50 percent of the project's cost from SIDF.

Comment 5: Petitioners contend that in determing the benefit conferred on Hadeed by its PIF loan, the Department should perform its caclulations on a year-by-year basis. Petitioners argue that this methodology is correct since the charges Hadeed pays on the loan in a given year are contingent on Hadeed's profitability for that year.

DOC Position: We agree. See DOC Position to Respondents' Comment 4.

Comment 6: Petitioners argue that the ship unloader and conveyor system provided to Hadeed by the Royal Commission should be considered a countervailable benefit because it is available only to industries located in Jubail. Alternatively, petitioners argue that Hadeed's lease/purchase agreement bestows a countervailable benefit on Hadeed because the terms of repayment are far more favorable to Hadeed than the terms of the lease/purchase agreement on the urea berthside handling system. Moreover, the benchmark for measuring the benefit should not reference the SIDF rate because SIDF does not fund ongoing operations or the purchase of used machinery or equipment. Finally, petitioners ask that the Department deny respondents' claim for proportioning the benefit to reflect less than full-time utilization of the equipment by Hadeed.

DOC Position: We determined that the provision of the ship unloader and conveyor system to Hadeed confers a bounty or grant because the repayment terms of Hadeed's lease/purchase agreement were preferential when compared to the repayment terms of the lease/purchase agreement for the urea berthside handling system. Also, we have used the difference in those terms to measure the benefit to Hadeed. Therefore, SIDF charges, which were used as best information available in our preliminary determination, have not been used for the final determination on this equipment. Finally, we have not proportioned the benefit as requested by respondents.

Comment 7: Petitioners argue that the test for finding Hadeed equityworthy is whether a reasonable commercial investor would be attracted to the investment. No reasonable investor, in their view, would have committed funds to Hadeed because (1) the World Bank's feasibility study, used to justify the Saudi government's equity investments in Hadeed, was flawed since information critical to a complete evaluation of the project was missing, and (2) the project's projected real rate of return was low and was qualified by "major risks." Also, the "feasibility" of the Hadeed project, as analyzed in the World Bank report, was dependent on concessional financing and the provision of infrastructure.

DOC Position: We disagree. As discussed in section I.C. above, we analyzed the World Bank study on Hadeed's direct reduction plant and billet mill and the later World Bank study on Hadeed's rolling mill and found that Hadeed was a reasonable commercial investment. Moreover, the fact that Korf Stahl, an independent private company, decided in 1979–1980 to invest in Hadeed is further evidence of the commercial viability of the Hadeed project.

Comment 8: Petitioners contend that by 1982 and 1983, when a large part of the equity investment was made, the economic situation had changed so that reliance on the earlier studies for investments in 1983 was unwise. Thus, post-1983 investments in Hadeed cannot be considered consistent with commercial considerations.

DOC Position: We agree. Particularly by late 1982, actual world prices of rebar were much lower than the corresponding prices forcast in the 1979–1980 World Bank studies on Hadeed; therefore, an investment decision made in 1982 should not have been based on these outdated price forcasts. See our discussion in section I.C. above.

Comment 9: Petitioners argue that SABIC's equity position in Hadeed gave rise to yet another bounty or grant: the provision of services from SABIC to Hadeed at concessional rates. Petitioners argue that since overhead costs were not included in SABIC's billing charges to Hadeed, a bounty or grant equal to the amount of staff salaries and fringe benefits billed, multiplied by a reasonable overhead factor, was bestowed on Hadeed.

DOC Position: Under a service contract between Hadeed and SABIC, SABIC performs certain services for Hadeed in Riyadh such as obtaining work permits and visas for foreign workers and arranging for customs clearances. Documents obtained at verification show that Hadeed was charged, and paid, for fees covering the salaries, fringe benefits, and overhead allocated to the SABIC employees working on its behalf.

Comment 10: Petitioners claim that the infrastructure, natural gas, utilities, and other benefits provided in Jubail are limited to a specific type of industry because Jubail was planned as a city with primary industry based on oil and natural gas complemented by downstream and supporting industries.

DOC Position: We disagree. There are three broad categories of industries located in Jubail. These are (1) primary: Energy-intensive petroleum and natural gas-based industries; (2) secondary: Downstream industries, particularly those able to use locally produced feedstocks; and (3) support/light manufacturing. We verified that these groups encompass a wide variety of firms and activities. Therefore, any alleged benefits received by virtue of location in Jubail are provided to more than a specific enterprise or industry, or group of enterprises or industries. Moreover, the Saudi government has provided infrastructure in a number of industrial estates throughout the Kingdom, and this infrastructure is used by a wide variety of industries without limitation.

Comment 11: Petitioners contend the Jubail infrastructure confers a regional bounty or grant. In their view, the infrastructure test (stated in full in section II.A of this determination), if intended to address the issue of regional subsidiaries, is inconsistent with *Michelin Tire Corp.* v. *United States* (2 C.I.T. 143 (1980)) (Michelin) because it ignores the differences between the subsidized areas and the rest of the country. That the form of benefit, infrastructure, is different from the benefits in *Michelin* (grants) is irrelevant because regional subsidies are presumptively countervailable. Moreover, the Department's standard ignores the doctrine reaffirmed in *Cabot* that the focus of the inquiry should be on actual, as opposed to nominal, benefits.

DOC Position: We disagree that the Jubail infrastructure provides a regional bounty or grant. Under petitioners' logic, every time a government builds a road or harbor it is providing a regional subsidy to those located in the vicinity of the road or harbor. Our three-part test was developed to avoid this extreme result. Furthermore, the form of the benefit is relevant. In the case of infrastructure, the government is providing goods or services which, by their nature, will benefit firms and individuals located in proximity to the infrastructure. Moreover, *Michelin*, which has been vacated as moot, Slip. op. 85–11 (Ct. Int'l. Trade), is distinguishable because grants, loans

and tax benefits are not by their nature limited in use, and, hence, are countervailable if provided on a regional basis. Finally, with respect to actual and nominal benefits, we have found that the ability to locate in Jubail and the other industrial estates is not limited *de jure* or *de facto*. As noted above, in light of the C.I.T.'s decision in *Carlisle*, we are not following the standard adopted by the Court in *Cabot*. Moreover, even assuming *arguendo* that *Cabot* constitutes a correct interpretation of the law, we do not think that this decision results in finding infrastructure to be a subsidy. To the contrary, *Cabot* suggests that the provision of infrastructure is a so-called "general benefit" which is not countervailable.

Comment 12: Petitioners contend that SABIC, the majority shareholder in Hadeed and a wholly-owned government entity until 1984, was exempt from Zakat. In their view, while the exemption formally benefitted SABIC, Hadeed's majority shareholder, a benefit was effectively conferred on Hadeed and should be countervailed.

DOC Position: We disagree. The Department verified that the Zakat was paid on Hadeed's net worth in 1984.

Comment 13: Petitioners contend that respondents have not denied the allegation that enterprises with over 50 percent Saudi ownership are given preference in government procurement and have refused to acknowledge that government agencies (such as pre-1984 SABIC) are part of the Saudi government; thus, respondents' statement that Hadeed does not sell to the government is without substance. The Department should conclude, therefore, that Hadeed received benefits which constitute subsidies from preferences in government procurement.

DOC Position: We disagree. Department officials verified, and petitioners have provided no documentation to the contrary, that Hadeed did not sell in 1984 to the Saudi government, SABIC, PETROMIN, Saudia Airlines, or other quasi-government entities. Therefore, it could not have benefitted from any government procurement preferences.

Comment 14: Petitioners contend that Saudi prohibition on the export of scrap metal confers a countervailable benefit on Hadeed by lowering Hadeed's input costs on scrap metal.

DOC Position: This allegation was first raised by petitioners shortly before the preliminary determination, when they brought to our attention a reference to the law restricting scrap exports. We did not investigate this allegation because petitioners did not show how this type of export prohibition constitutes a bounty or grant. In particular, we have found export taxes to be not countervailable in other cases. (See: "Final Result of Administrative Review; Non-Rubber Footwear from Argentina", (March 16, 1984, 49 FR 9922); "Preliminary Results of Administrative Review; Leather Wearing Apparel from Argentina," (May 14, 1984, 49 FR 20348); "Final Negative Countervailing Duty Determination; Anhydrous and Aqua Ammonia from Mexico", (June 22, 1983, 48 FR 28523); and "Final Affirmative Countervailing Duty Determination; Certain Carbon Steel Products from Brazil", (April 26, 1984, 49 FR 17988") Furthermore, petitioners offered no arguments that the Saudi law was distinuishable from the earlier situations or that the export tax had resulted in lower domestic prices for scrap.

Respondents' Comments

Comment 1: Respondents contend that Hadeed's long-term loan from the PIF, one of Saudi Arabia's five specialized credit institutions, is not countervailable since the Department should consider the lending programs of the specialized credit institutions in the aggregate. Respondents argue that these credit institutions are complementary parts of an overall government lending program which makes loans available to commercial ventures in virtually every industry in Saudi Arabia.

DOC Position: We disagree. The government of Saudi Arabia has established five distinct specialized credit institutions, one of which is the PLF. There is no evidence that PIF loans and loans provided by the other institutions are linked in any way to an overall government lending policy to provide loans on comparable terms to the various groups serviced by these institutions. Therefore, in order to determine whether or not the specificity test is satisfied, we consider each government program saparately. In support of their arguments, respondents cite precedents from *Cold-Rolled Carbon Steel Flat-Rolled Products from Korea* (49 FR 47284, 47289 (December 3, 1984)); *Prestressed Concrete Steel Wire Strand from France* (47 FR 47031, 47032 (Oct. 22, 1982)); and *Certain Textile Mill Products and Apparel from Colombia* (50 FR 9863, 9865 (March 12, 1985)). In the *Korea* case, we examined government loan programs in the aggregate in response to a specific allegation by petitioners that the government was directing credit to the steel industry through government banks and loan programs. However, as specifically stated in the *Korea* case, we also examined each government program separately in order to determine if the individual programs conferred a subsidy. In the *France* case, we examined loans provided through all regional development agencies in France to determine whether they were limited to a specific region. However, we also made a separate determination that the loans themselves were not limited to specific enterprises or industries. In the *Colombia* case, we examined a specific program and found that it was limited to a specific enterprise or industry, or group or enterprises or industries. We aggregated loan programs, in the *Colombia* case only after we determined that those programs were not limited in order to determine the appropriate benchmark with which to compare the loans given under the program that was limited. Accordingly, the specificity test still applies to individual loan programs.

Comment 2: Respondents argue that Hadeed's long-term loan from the PIF is not countervailable because PIF loans are not limited to a specific enterprise or industry, or group or enterprises or industries. Respondents maintain that PIF loans are available for investment in any project of a commercial nature in which there is some public ownership. Respondents dispute petitioners' contention that PIF loans are limited to hydrocarbon-based industries, since some of the PIF loans which have been made were extended to Saudia Airlines, a commercial transportation company.

DOC Position: As discussed above, we determined that PIF loans were provided to finance for projects undertaken by three specific enterprises. While the Fund may be open to investment in any project in which there is some public ownership, the loans, in fact, have been provided only to three companies. See DOC Position to petitioners' Comment 1.

Comment 3: Respondents contend that, because Saudi religious law prohibits interest charges on loans, there are no long-term commercial lending rates against which to measure the terms and conditions of Hadeed's PIF loan. Therefore, respondents argue that PIF loans are not countervailable because there is no alternative source of long-term financing in Saudi Arabia. To support this contention, petitioners argue that the Kingdom's five specialized credit institutions (of which the PIF is one) are the only sources of long-term financing in the country, and all offer long-term financing on substantially similar terms. Respondents further state that Saudi commercial banks did not have sufficient resources in 1979 to extend a loan comparable (in amount or duration) to Hadeed's PIF loan.

DOC Position: While we agree with respondents that the Sharia has had a fundamental impact on Saudi Arabia's commercial lending practices and that long-term project financing is, for the most part, not available from commercial banks in the Kingdom, we do not agree with respondents that government long-term lending is the *only* appropriate benchmark against which to measure the terms and conditions of Hadeed's PIF loan. Department officials verified that medium-term loans from commercial banks do exist in Saudi Arabia. Furthermore, since the government's SIDF loan program has a lending limitation of 50 percent of project costs, it was necessary to assume that commercial banks would have loaned the remaining funds (*i.e.*, that amount in excess of 50 percent SIDF statutory limit) required for Hadeed's project.

Comment 4: Respondents argue that if the Department finds Hadeed's PIF loan to be countervailable, the benefits must be allocated over the life of the loan, rather than a "snapshot" approach (*i.e.*, a year-by-year approach to the benefits received), as argued by petitioners.

DOC Position: We disagree. In accord with its Subsidies Appendix, the Department allocates subsidies over the life of the loan when the terms of the loan have a "readily identifiable effect on the company over time." (See *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina*, 49 FR at 18019). the terms of Hadeed's PIF loan, however, are not readily identifiable since Hadeed's future payments on the loan depend on future profitability. Computation of the "effect" of the PIF loan on Hadeed, therefore, is not possible except on a year-by-year basis.

Comment 5: Respondents argue that if the Department constructs a benchmark against which to measure any benefit from the PIF loan, it should consider using either a weighted-average composite of the cost of all government loans, or an SIDF loan rate without a maximum percentage limitation. Respondents argue that since Hadeed's PIF loan accounted for less than half of the project's total costs (in 1983), it is inappropriate to compare the PIF loan to a composite SIDF-commercial loan benchmark.

DOC Position: As discussed in Section 1.A above, we used a composite SIDF-commercial loan benchmark in evaluating Hadeed's PIF loan. We chose the SIDF loan because SIDF is the only Saudi specialized credit institution, other than PIF, which provides industrial loans, and we verified that SIDF has provided loans to hundreds of companies in a wide variety of industries. Since the other Saudi specialized credit institutions do not provide industrial loans, we did not use a composite benchmark based on the other credit institutions. Furthermore, the composite SIDF-commercial loan benchmark consists, not of the maximum SIDF feasibility and follow-up fees, but of the maximum feasibility charge pro-rated over the life of the PIF loan and the 1981–1985 average SIDF follow-up fees.

Respondents' claim that the PIF loan covered less than half of project costs is based on year-end 1983 cost figures. While the 50 percent cost figure may be correct for 1983, the Department, when evaluating a loan decision, reviews the actual circumstances and information available when the decision was made. As acknowledged in Hadeed's PIF loan agreement, the amount of the PIF loan comprised 60 percent of Hadeed's total estimated project costs. Thus, we used the 60 percent figure as the basis for our benchmark calculations.

Comment 6: Respondents argue that, in general, the annualized cost of all charges associated with an SIDF loan is less than one percent, a fact which was confirmed by Department officials during verification. Therefore the two percent SIDF financing rate used to calculate the composite SIDF-commercial benchmark for the preliminary determination was incorrect. Respondents argue that, for the final determination, the verified SIDF rate should be used with respect to all calculations involving SIDF loans.

DOC Position: We agree. At verification, we ascertained the maximum allowable charge for the SIDF feasibility study fee, obtained annual follow-up charges actually paid during 1981–1985 on a sample of large SIDF loans, and examined the actual terms and charges paid on a specific SIDF loan. In constructing our composite SIDF-commercial benchmark on Hadeed's PIF loan, we used the verified maximum SIDF feasibility fee, pro-rated over the life of Hadeed's PIF loan, and the average annual SIDF follow-up charge derived from the SIDF loan sample.

Comment 7: Respondents contend that the Department erred in its preliminary determination when it characterized the lease/purchase agreement between Hadeed and the Royal Commission for Jubail and Yanbu as a long-term loan. Respondents further argue that the Department based its preliminary determination concerning Hadeed's lease/purchase agreement on incorrect figures since, as shown at verification, the cost of an SIDF loan is less than two percent per year. Finally, respondents submit that the terms on which the lease/purchase agreement is based (*i.e.*, full cost recovery plus two percent finance charge) do not confer a countervailable benefit because two percent is the standard fee charged by the Royal Commission for the cost of money.

DOC Position: At the time of our preliminary determination, we did not have complete information on the terms of the lease/purchase agreement and, therefore, we treated it as a long-term loan. During verification, we obtained information on fees charged by the Royal Commission to recover the cost of money for facilities provided to companies. We have compared the repayment terms of Hadeed's lease/purchase agreement to the repayment terms on a lease/purchase agreement for a similar piece of equipment, and found the terms of Hadeed's agreement to be preferential. Accordingly, we determined that Hadeed's lease/purchase agreement conferred countervailable benefits because the equipment was provided for the use of only one company and it was provided on preferential terms.

Comment 8: Respondents argue that if the lease/purchase agreement had not been available to finance the unloader/conveyor system, Hadeed would have either leased the equipment or developed a less expensive transport alternative. Respondents further argue that if the Department does not accept full cost recovery plus two percent as the commercial norm for the lease/purchase agreement, a "proportionality factor" should be included in the Department's benefit calculations. This "proportionality factor" should reflect the fact that in 1984, Hadeed used only a fraction of the conveyor's capacity (see *Carbon Steel Wire Rod from Trinidad and Tobago*, 49 FR 482). Finally, respondents state that the unloader/conveyor system was not provided on preferential terms to Hadeed because the cost of the system is disproportionate to its economic benefit.

DOC Position: We disagree. The end results of a firm's economic decisions are irrelevant to the Department's analysis of whether or not a bounty or grant exists. The Department assumes that all contracts or agreements which a company enters into are done so based on the assumption that an economic benefit will ensue. Therefore, the Department, in making its subsidy determinations, must evaluate the actual terms and conditions agreed upon in the contract.

We would not, and did not, proportion the benefit based on Hadeed's actual

use of the unloader/conveyor system because Hadeed is the only user of this equipment. Finally, respondents' argument that Hadeed may not be receiving an economic benefit equal to the cost of the system is irrelevant since that is not the standard for determining whether a good or service has been provided at perferential rates

Comment 9: Respondents argue that the Saudi government does not limit who may locate in industrial estates and that there are ten industrial estates located throughout the country; therefore, infrastructure development does not confer a bounty or grant.

DOC Position: We have determined that the provision of infrastructure does not confer a bounty or grant. See our discussion in section II.A above.

Comment 10: Respondents argue that land rental rates and utility rates on gas, water, and electricity do not confer special benefits to the manufacturing sector because land rental and water, electricity, and gas are available at standard Kingdom-wide rate to all industrial users.

DOC Position: We have determined that the provision of land and utility rates are not countervailable. See our discussion in section II.B above.

Comment 11: Respondents contend that the Department's verification team confirmed that Hadeed did not receive any special joint-venture benefits, and that some of the benefits, alleged by petitioners, do not exist.

DOC Position: We Agree. Department Officials verified that Hadeed did not benefit from any income tax holidays since, due to operational losses, it did not incur any tax liability. Department Officials also verified that Hadeed did not receive benefits from government procurement preferences or any exemptions from bonding and payment retention requirements. Based on this verified information, we determined that Hadeed did not receive any special joint-venture benefits.

Comment 12: Respondents argue that the commercial viability of the Hadeed investment has been demonstrated through feasibility studies which satisfied the Ministry of Industry and Electricity, the PIF, and Korf, the independent commercial investor. Furthermore, respondents argue that SABIC's decision to invest in Hadeed, based on its projected economic viability, has been justified because Hadeed's rate of return compares favorably with other SABIC projects. For these reasons, respondents state that Hadeed should be found to be continuously equityworthy since 1979.

DOC Position: We agree that these factors provided a reasonable basis for SABIC's initial decisions in 1979 and 1981 to invest in the construction of Hadeed's steel making facilities and rolling mill in Jubail. However, actual prices during the 1982–1984 period were significantly lower than the price assumptions for rebar the initial feasibility studies. We determined that by late 1982 these feasibility studies no longer constituted a reasonable basis for future investment in Hadeed. Thus, we determined that as of late 1982, Hadeed was unequityworthy.

Comment 13: Respondents argue that SABIC's continuing capital contributions to Hadeed were reasonable commercial investments, since these contributions were made to construct and operate the Jubail rolling mill, a separate project, and to purchase SULB, a wholly-owned subsidiary of Hadeed. Resondents argue that based on precedent (*e.g., Carbon Steel Wire Rod from Trinidad and Tobago,* 49 F.R. 484), a project "must have lost all measure of commercial reasonableness" before subsequent investments are deemed inconsistent with commercial considerations. Based on this standard, the Department should not countervail SABIC's two equity infusions to Hadeed.

DOC Position: We have consistently held that each decision pertaining to equity investment must be examined on its own merits and on the available facts and market conditions prevailing at the time of the investment decision. For this reason, we did not find SABIC's initial 1979–1981 investment decisions to be inconsistent with commercial considerations based on price declines in the 1979–1984 period. However, price decreases through 1982 and any revisions to expectations of future price levels caused by these declines were relevant to SABIC's 1982 decision to transfer its shareholding in SULB to Hadeed. See our discussion in section I.C. above.

Comment 14: Respondents argue that Hadeed's commercial viability was also confirmed by the fact the Korf Stahl, an independent private investor, decided to invest in the project.

DOC Position: We agree. As an independent private investor, Korf Stahl's 1979–1980 decisions to invest in the construction of the Hadeed project were relevant in considering whether the project was made on terms consistent with commercial considerations.

Comment 15: Respondents contend that duty exemptions are available to all "industrial establishments" in Saudi Arabia, and that Department officials confirmed that these duty exemptions are available both nominally and *de facto.*

DOC Position: We agree. See our discussion in section 11.B above.

Comment 16: Respondents argue that the Department should determine that Saudi Arabia's "industrial establishments" are not a "specific group of enterprises or industries," since the Department has previously determined that identifiable groups of industries, both smaller and less varied than the Kingdom's "industrial establishments," fail to constitute specific groups of enterprises or industries.

DOC Position: We have determined that the manufacturing sector in Saudi Arabia does not constitute a specific enterprise or industry, or group of enterprises or industries. See our discussion in section II.B above.

Comment 17: Respondents contend that neither SABIC nor Hadeed is exempt from paying Zakat. In addition, Department officials verified that Hadeed's Zakat obligations were paid in full, as required by the Zakat regulations. Hence, this program is not countervailable.

DOC Position: We agree. See our discussion in section II.C above.

Comment 18: Respondents maintain that SABIC has never guaranteed any of Hadeed's or SULB's government or commercial loans.

DOC Position: We agree. At verification, we found no evidence to substantiate petitioners' allegation.

Verification

In accordance with section 776(a) of the Act, we verified the information and data used in making our final determination. During verification, we followed normal verification procedures, including meeting with government officials and inspection of documents as well as on-site inspection of the accounting records of Hadeed, the company producing and exporting the merchandise under investigation to the United States.

Administrative Procedures

In response to a November 27, 1985, request from respondents and a December 2 request from petitioners, we held a public hearing concerning this investigation on December 20. We received pre-hearing briefs on December 17 and post-hearing briefs on January 2, 1986.

Suspension of Liquidation

The suspension of liquidation ordered in our preliminary affirmative countervailing duty determination will remain in effect until further notice. The

estimated net bounty or grant is 5.48 percent *ad valorem*.

In accordance with section 706(a)(3) of the Act, we are directing the U.S. Customs Service to require a cash deposit for each entry of this merchandise which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

William T. Archey,

Acting Assistant Secretary for Trade Administration.

January 27, 1986.

[FR Doc. 86-2306 Filed 1-31-86; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Small ICBMs; Cancellation of Meeting

The meeting notice for the Defense Science Board Task Force on Small ICBMs on 12 February 1986 as published in the **Federal Register** (Vol. 51, No. 17, Monday, January 27, 1986, FR Doc 86-1700.) has been cancelled. In all other respects the original notice remains unchanged.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 29, 1986.

[FR Doc. 86-2303 Filed 1-31-86; 8:45 am]

BILLING CODE 38-10-01-M

Defense Advisory Committee on Women in the Services (DACOWITS); Meeting

SUMMARY: Pursuant to Pub. L. 92-463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review the response to the Recommendations, Requests for Information, and Continuing Concerns made by the Committee at the 1985 Fall Meeting; discuss current issues relevant to women in the Services; and plan the program for the semi-annual spring meeting scheduled for 27 April–1 May 1986 in Washington, DC. All meeting sessions will be open to the public.

DATE: February 24, 1986, 1:30–5:00 p.m. and February 25, 1986, 9:30–11:30 a.m.

ADDRESS: OSD Conference Room 1E801 #7, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Major Marilla J. Brown, Executive Secretary, DACOWITS, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301-4000; telephone (202) 697-2122.

SUPPLEMENTARY INFORMATION: Persons desiring to (1) attend the Executive Committee Meeting or (2) make oral presentations or submit written statements for consideration at the meeting must notify the point of contact listed above no later than February 10, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 29, 1986.

[FR Doc. 86-2304 Filed 1-31-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Order; Suburban Propane Gas Corp.

AGENCY: Economic Regulatory Administration, Depatment of Energy.

ACTION: Notice of proposed consent order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order with Suburban Propane Gas Corporation concerning propane, butane and natural gasoline resales by the firm, and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order.

DATED: Comments by: March 5, 1986.

ADDRESS: Send comments to: Suburban Consent Order Comments, Office of Field Operations, U.S. Department of Energy, 1403 Slocum, Second Floor, Dallas, Texas 75207.

FOR FURTHER INFORMATION CONTACT: Ben L. Lemos, Director, Office of Field Operations, Economic Regulatory Administration, U.S. Department of Energy, 1403 Slocum, Second Floor, Dallas, Texas 75207; Tel: (214) 767-4646. (Copies of the Consent Order may be obtained free of charge by writing or calling this office.)

SUPPLEMENTARY INFORMATION: On October 21, 1985, the ERA executed a proposed Consent Order with Suburban Propane Gas Corporation for $1,800,000. Under 10 CFR § 205.199(b), a proposed Consent Order which involves the sum of $500,000 or more, excluding interest and penalties, becomes effective no sooner than thirty days after publication of a notice in the **Federal Register** requesting comments concerning the proposed Consent Order. Although ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order or issue the Consent Order as signed.

1. Background

Suburban Propane Gas Corporation (Suburban) was involved in reselling activities during the audit period of November 1973 through October 1978. Suburban consisted of six primary entities which were engaged in the activities or reselling and retailing, producing, gas processing and crude oil refining.

On October 10, 1974, the Federal Energy Administration (FEA), the predecessor agency of the ERA, issued a Notice of Probable Violation (NOPV) to Suburban which alleged that the firm and its subsidiaries should be treated as a refiner under FEA petroleum price regulations. The firm responded and the NOPV was rescinded on December 7, 1978.

Additional audit work undertaken and two NOPV's were given to representatives of Suburban on May 28, 1981. One of the NOPV's (Case No. 733S02013) was resolved by Consent Order on July 29, 1981. The remaining NOPV (Case No. 733V02020), treating three entities of Suburban as one firm, was rescinded on February 25, 1985. This action was based on information provided by Suburban which supported its position that its reseller entity was correctly treated separately under the regulations. As a result, it was determined that Suburban overcharged its customers in its sales of propane for the period November 1973 through October 1978 in the amount of $2,059,997 plus interest.

After additional meetings with the firm, ERA considered further submissions and arguments presented by the firm and concluded that there still remained several unresolved issues concerning Suburban's compliance with the regulations. Included in the issues were:

(1) Whether ERA correctly determined the amount of Suburban's vapor loss and treated it properly in its calculations of the allowable passthrough of costs; and

(2) Whether Suburban was allowed all permissible cost passthroughs for the month of December 1973. ERA also

determined that further pursuit of this matter could involve complex and difficult litigation.

In light of the foregoing, it is the opinion of the ERA that a payment of $1,800,000 is a satisfactory compromise of the issues raised in this audit. This amount includes interest.

II. The Consent Order

The proposed Consent Order has been entered into to resolve all civil and administrative disputes, claims, and causes of action by DOE relating to Suburban's compliance in its resales of propane, butane and natural gasoline during the audit period. Although Suburban contends that in all respects it correctly construed and applied the applicable regulations, Suburban has entered into this proposed Consent Order to avoid the expense of litigation and the disruption of business. DOE believes the Consent Order is in the public interest and provides a satisfactory resolution of the issues raised by its audit.

III. Refunds

Under the Consent Order, Suburban will pay the sum of $1,800,000 within thirty days of the effective date of the Consent Order. The Administrator (or his designee) of ERA shall direct that these monies be deposited in a suitable account and ERA will petition DOE's Office of Hearings and Appeals to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V, to distribute the monies.

In consideration for Suburban's performance under the Consent Order, the DOE agrees not to pursue any civil claims against Suburban that the DOE may have arising out of the matters covered by the Consent Order.

The foregoing provisions for payment of the refund amount were established because ERA was unable to readily identify the ultimate injured parties due to the nature of the alleged violations and the complexities of petroleum marketing.

IV. Submission of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of this Consent Order to the address given above. Comments should be identified on the outside of the envelope and on the documents submitted with the designation "Comments on Suburban Propane Gas Corporation Consent Order." The ERA will consider all comments it receives by 4:30 p.m. CST, thirty (30) days after the date of publication of this notice. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures in 10 CFR § 205.9(f).

Issued in Washington, D.C., on the 15 day of January 1986.

James N. Solit,

Acting Director, Office of Enforcement Programs, Economic Regulatory Administration.

[FR Doc. 86-2324 Filed 1-31-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP86-165-000]

Northwest Alaskan Pipeline Co.; Informal Conference

January 27, 1986.

Take notice that on February 6, 1986, at 10:00 a.m. an informal conference will be convened to discuss the details of the proposal advanced by Northwest Alaskan Pipeline Company in the above-captioned proceeding. The conference will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC.

All interested persons and the Commission staff are invited to attend; however, attendance at the conference will not confer party status. Any person wishing to become a party to this proceeding must file a motion to intervene in accordance with Rule 214(d) of the Commission's rules of practice and procedure (18 CFR 385.214(d)). For further information contact Bob Wolfe, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, (202) 357-8598.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2223 Filed 1-31-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9610-000, et al.]

Hydroelectric Applications; Puget Sound Power & Light Co., et al.; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. Type of Application: Preliminary Permit.

b. Project No.: 9610-000.

c. Date Filed: November 4, 1985.

d. Applicant: Puget Sound Power & Light Company.

e. Name of Project: Tye River.

f. Location: On the Tye River, tributary to the Snohomish River, near the town of Scenic, in King County, Washington, and affecting lands within the Snoqualmie National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Robert V. Myers, Puget Power Building, Bellevue, WA 98009.

i. Comment Date: March 6, 1986.

j. Description of Project: The proposed run-of-river project would consist of: (1) A 10-foot-high, 37-foot-long, concrete-gravity, overflow-type diversion dam with spillway crest elevation 1,735.5 feet msl; (2) an intake structure at the right (north) bank; (3) an 84-inch-diameter, 9,170-foot-long concrete and steel penstock; (4) a powerhouse containing two generating units each rated at 5.0-MW at a flow of 188 cfs and at a net head of 376 feet; (5) a tailrace; (6) an access road to the powerhouse; (7) a 2,200-foot-long underground 13.8-kV transmission line; and (8) a 13.8/115-kV switchyard.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary. The estimated cost of permit activities is $100,000.

k. Purpose of Project: Applicant intends to sell the power produced at the site to its customers. Applicant estimates that the average annual energy production would be 45,400 MWh.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

2a. Type of Application: New Major License.

b. Project No.: P-2302-003.

c. Date Filed: October 8, 1985.

d. Applicant: Central Maine Power Company and Union Water-Power Company.

e. Name of Project: Lewiston Falls.

f. Location: On the Androscoggin River in Androscoggin County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Ralph L. Bean, Vice President, Engineering, Central Maine Power Company, Edison Drive, Augusta, Maine 04336.

i. Comment Date: March 6, 1986.

j. Description of Project: The existing project consists of: (1) An existing stone-masonry dam comprised of four main

sections capped with eight inches of reinforced concrete with a crest elevation of 164.17 feet USGS, the sections are equipped with removable steel pins that support 4-foot-high flashboards, also includes a concrete section with a maximum height of 4 feet with a fixed crest elevation of 166.83 feet USGS; (2) an existing reservoir having a surface area of about 200 acres, a storage capacity of 1600 acre-feet with a full pond elevation of 168.17 feet USGS; (3) two existing gatehouse buildings impounding the reservoir; (4) an existing canal system which is comprised of two main canals; Upper and Lower Canal, and three interconnecting canals; Cross Canals #1, #2, and #3, the canals vary in depth from 10 to 12 feet and in width from 23 to 65 feet and in length from 570 feet to 4400 feet. The licensed project facilities are used to provide water power to various non-project generating facilities on the canal system which have a total installed capacity of about 14,000 kilowatts. The redeveloped project would consist of: (1) The existing canal system; (2) the existing generating facilities which are comprised of the facilities at the Bates Weave Shed, the Hill Mill, the Upper Androscoggin, the Lower Androscoggin, the Continental Mills and the Bates No. 2; (3) two existing penstocks each serving three turbines at the Hill Mill site; (4) an existing powerhouse with a total installed capacity of 880 kW; (5) an existing tailrace; (6) a second powerhouse containing six generating units with a total installed capacity of 1850 kW; (7) an existing station housing three turbine/generators with a total installed capacity of 1,695 kW; (8) an existing station with a total installed capacity of 250 kW with flows discharging back into the Androscoggin River; (9) an existing penstock 10 feet in diameter and 175 feet long; (10) a third existing powerhouse housing one turbine generator with a total installed capacity of 450 kW; (11) an existing tailrace; (12) a fourth powerhouse housing five turbine/generators with a total installed capacity of 1200 kW; (13) an existing tailrace; (14) a new concrete powerhouse containing two new turbine/generators with a total installed capacity of 25,000 kW; (15) a new tailrace; (16) an existing 3 phase, 34.5–kV transmission line will be tapped to transmit the project's output to the utility system; and (17) appurtenant facilities. The dam is owned by Central Maine Power Company.

The Applicant estimates the average annual generation would be 142.7 GWh. The existing project would also be subject to Federal takeover under section 14 and 15 of the Federal Power Act. The Applicant's estimated net investment in the project would amount to $55,000,000.

k. Purpose of Project: Project power would continue to be sold to the customers of Central Maine Power

l. This notice also consists of the following standard paragraphs: A3, A9, B and C.

3a. Type of Application: Relicense (Minor).

b. Project No.: 2428–001.

c. Date Filed: December 21, 1984.

d. Applicant: Aquenergy Systems, Inc.

e. Name of Project: Piedmont.

f. Location: Saluda River, Greenville County, South Carolina.

g. Filed Pursuant To: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ralph H. Walker, Jr., President, Aquenergy Systems, Inc., P.O. Box 6692, Greenville, SC 29606.

i. Comment Date: March 5, 1986.

j. Description of Project: The existing operating run-of-river project consists of: (1) A 25-foot-high and 600-foot-long stone masonry dam which has a 200-foot-long overflow spillway section fitted with 16-inch flashboards; (2) a reservoir with a surface area of 22 acres at the normal water surface elevation of 774.0 feet (m.s.l.); (3) an open flume intake canal, approximately 144 feet long and 81 feet wide; (4) a powerhouse containing a single generating unit with a rated capacity of 1,000 kW; (5) a tailrace, approximately 180 feet long and 38 feet wide, (6) a 600 Volt transmission line approximately 263 feet long; and (7) appurtenant facilities. The project generates an overage of 6,500,000 kWh annually.

k. Purpose of Project: The project energy is sold to Duke Power Comapny.

l. This notice also consists of the following standard paragraphs: B, C, and D1.

4a. Type of Application: Preliminary Permit.

b. Project No.: 9473–000.

c. Date Filed: September 23, 1985.

d. Applicant: Hope Mills Power Company, Inc.

e. Name of Project: Hope Mills No. 1.

f. Location: Little Rock Fish Creek, Cumberland County, North Carolina.

g. Filed Pursuant To: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Charles B. Mierek, Hope Mills Power Comany, Inc., Route 2, Box 302A, Spartanburg, SC 29302.

i. Comment Date: March 7, 1986.

j. Description of Project: The proposed would consist of: (1) An existing earth dam, 35 feet high and about 250 feet long; (2) an existing reservoir with a surface area of approximately 90 acres and a gross storage capacity of about 1,000 acre-feet; (3) and existing intake structure; (4) an existing powerhouse which would house 3 generating units with a total capacity of 1,000 kW; (5) a proposed 12.5-kV or 23-kV transmission line, about 1,000 feet in length; and (6) appurtenant facilities. The estimated average annual generation is 2.0 GWh.

k. Purpose of Project: The project power would be sold to Carolina Power and Light Company or to North Carolina Electric Membership Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $25,000.

5a. Type of Application: Preliminary Permit.

b. Project No.: 9433–000.

c. Date Filed: September 5, 1985.

d. Applicant: Hope Mills Power Company, Inc.

e. Name of Project: Hope Mills No. 2.

f. Location: Rock Fish Creek, Cumberland County, North Carolina.

g. Filed Pursuant To: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Charles B. Mierek, Hope Mills Power Company, Route 2, Box 302A, Spartanburg, SC 29302.

i. Comment Date: March 7, 1986.

j. Description of Project: The proposed would consist of: (1) An existing breached earth and concrete dam about 30 feet high and 250 feet long, which would be rehabilitated; (2) a reservoir, which would be reestablished following rehabilitation of the project dam, with a surface area of approximately 80 acres and a gross storage capacity of about 1,000 acre-feet; (3) and existing intake structure located at the center of the dam; (4) a proposed powerhouse containing two generating units with a total capacity of 1,400 kW; (5) a proposed 12.5 kV or 23.0 kV transmission line, about 1000 feet in length; and (6) appurtenant facilities.

The estimated average annual generation is 2.8 GWh.

k. Purpose of Project: The project power would be sold to Carolina Power and Light Company or to North Carolina Electric Membership Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $25,000.

6a. Type of Application: Preliminary Permit.

b. Project No.: 9508–000.

c. Date Filed: September 30, 1985.

d. Applicant: Aguenergy Systems, Inc.

e. Name of Project: Piedmont II.

f. Location: Saluda River, Anderson County, South Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ralph H. Walker, Jr., President, Aguenergy Systems, Inc., P.O. Box 6692, Greenville, SC 29606.

i. Comment Date: March 7, 1986.

j. Description of Project: The proposed would consist of: (1) An existing stone masonry dam, approximately 600 feet long and 28 feet high; (2) an existing reservoir with a surface area of approximately 22 acres and a minimal storage capacity; (3) three existing penstocks, each about 7 feet in diameter; (4) an existing brick powerhouse structure, in which it is proposed to install 3 generating units with a total capacity of 900 kW; (5) an existing tailrace, approximately 150 feet long and 60 feet wide; (6) a proposed 12.5-vK transmission line, about 300 feet long; and (7) appurtenant facilities. The estimated average annual generation is 2.8 GWh.

k. Purpose of Project: The project power would be sold to Duke Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $10,000.

7a. Type of Application: Preliminary Permit.

b. Project No.: 9476–000.

c. Date Filed: September 24, 1985.

d. Applicant: Pearch Creek Power Partners.

e. Name of Project: Pearch Creek Hydroelectric.

f. Location: On Pearch Creek, a tributary to Klamath River, near Orleans, within the Six Rivers National Forest, in Humboldt County, California (In sections 32 and 33 of T11N, R6E, H.M.&B.).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, 1350 New York Avenue, #600, Washington, DC 20005, (202) 457–7500.

i. Comment Date: March 7, 1986.

j. Description of Project: The proposed project would consist of: (1) Two 4-foot-high, 40-foot-long, rock diversion dams (one on the North Fork and the other on the South Fork), both at elevation 1,600 feet msl; (2) a 2-foot-diameter, 9,000-foot-long steel penstock; (3) a powerhouse containing a single turbine-generator unit with a rated capacity of 700 kW and operating under a head of 875 feet; and (4) a 12.5–kV, 5,000-foot-long transmission line interconnecting the project to an existing Pacific Gas and Electric Company (PG&E) line. The project's estimated average annual generation of 6.1 GWh would be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $145,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

8a. Type of Application: Preliminary Permit.

b. Project No.: 9573–000.

c. Date Filed: November 1, 1985.

d. Applicant: Upper Slate Creek Associates.

e. Name of Project: Upper Slate Creek.

f. Location: In Nez Perce National Forest on Slate Creek, in Idaho County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mike Graham, 484 East 300 North, Manti, UT 84642.

i. Comment Date: March 7, 1986.

j. Description of Project: The proposed project would consist of: (1) A 2-foot-high check dam at elevation 2,560 feet; (2) an 18,000-foot-long, 50-inch-diameter penstock; (3) a powerhouse containing one generating unit with a capacity of 4,400 kW and an average annual generation of 14,552 MWh; and (4) a 5-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $12,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The project power would be sold.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

9a. Type of Application: Preliminary Permit.

b. Project No.: 9611–000.

c. Date Filed: November 4, 1985.

d. Applicant: Saywatt Hydro Associates.

e. Name of Project: Mechanicsville Project.

f. Location: On the French River in Windham County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Thomas A. Tarpey, 99 North State Street, Concord, NH 03301.

i. Comment Date: March 7, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 586-foot-long and 30-foot-high masonry dam with a spillway elevation of 307 feet msl; (2) an existing 44-acre surface area reservoir with a storage capacity of 340-acre-feet with a maximum surface elevation of 307 feet msl; (3) an existing powerhouse to be rehabilitated to contain two turbine/generators for an installed capacity of 320 kW; (4) an existing 50-foot-wide, 6'foot-deep and 120-foot-long tailrace; (5) a proposed 800-foot-long 4.8-kV transmission line; and (6) appurtenant facilities. The estimated average annual energy produced by the project would be 1,210,000 kWh under a hydraulic head of

15 feet. The dam is owned by the Essex Hydro Associates, Inc.

k. Purpose of Project: Project power will be sold to the Northeast Utility Company.

l. This notice also consist of the following standard paragraphs A5, A7, A9, B, C, & D2.

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $20,000.

10a. Type of Application: Preliminary Permit.

b. Project No.: 9553–000.

c. Date Filed: October 24, 1985.

d. Applicant: School Street Hydro Corporation.

e. Name of Project: Cohoes Falls.

f. Location: On the Mohawk River in Saratoga County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Paul J. Elston, 420 Lexington Avenue, Suite 440, New York, NY 10170.

i. Comment Date: March 7, 1986.

j. Description of Project: The Applicant proposes to develop the presently unutilized capacity at the School Street Dam owned and licensed to the Niagara Mohawk Power Corporation for the existing School Street Dam Project No. 2539 which consists of: (1) An existing 280-foot-long, 16-foot-high masonry dam; (2) An existing 100-acre reservoir with a storage capacity of 240 acre-feet; (3) five existing penstocks; (4) an existing powerhouse with five turbine/generators with an installed capacity of 38,800 kW; (5) an existing tailrace; (6) an existing transmission line; and (7) appurtenant facilities. The proposed project would consist of: (1) A proposed gated headworks structure to control flow to the power canal; (2) a proposed 550-foot-extension to the existing dam with a proposed spillway at a crest elevation of 156.1 feet msl; (3) a proposed flap gate bypass which will pass ice and debris; (4) a proposed 4200-foot-long and 100-foot-wide power canal to convey flows to; (5) a proposed gated intake structure to control the flow to; (6) two proposed 100-foot-long penstocks with inside diameters of 22 feet; (7) a proposed powerhouse to contain two turbine-generators for a total installed capacity of 71,900 kW; (8) a proposed tailrace approximately 360 feet long; (9) a new 115-kV transmission line, 1000 feet long; and (10) appurtenant facilities. The estimated average annual energy produced by the project would be 86 million kWh operating under a new hydraulic head of 95 feet.

k. Purpose of Project: Project power will be sold to the Niagara Mohawk Corporation.

l. This notice also consist of the following standard paragraphs A5, A7, A9, B, C, & D2.

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $160,000.

11a. Type of Application: Minor License.

b. Project No.: 9282–000.

c. Date Filed: June 10, 1985.

d. Applicant: Winslow H. MacDonald.

e. Name of Project: Pine Valley.

f. Location: On the Souhegan River in Hillsborough County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Winslow H. MacDonald, Trustee, Milford Elm Street Trust, 657 Main Street, Waltham, MA 02154.

i. Comment Date: March 7, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 23-foot-high, 200-foot-long concrete, stone, and masonry dam; (2) a reservoir with a water surface area of 7 acres, a storage capacity of 70 acre-feet, and a water surface elevation of 323.6 feet MSL with; (3) 4-foot-high flashboards; (4) two existing steel intake gates; (5) a new 8-foot-diameter, 2,700-foot-long steel penstock; (6) a new generating unit located at the dam and having a generating capacity of 30 kW; (7) an existing powerhouse on the left bank containing two existing generating units with a capacity of 350 kW each for a total installed capacity of 730 kW; (8) an existing 155-foot-long tailrace; (9) two new transmission lines, 200 feet and 1,500 feet long; and (10) appurtenant facilities. The Applicant estimates that the average annual generation would be 2,305,000 kWh. The existing dam is owned by Winslow H. MacDonald, Waltham, Massachusetts.

k. Purpose of Project: Project power would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

12a. Type of Application: Preliminary Permit.

b. Project No.: P–9455–000.

c. Date Filed: September 13, 1985.

d. Applicant: Newburgh Hydro Partners.

e. Name of Project: Newburgh Lock and Dam.

f. Location: On the Ohio River in Henderson County, Kentucky, and Warrick County, Indiana, near Newburgh, Indiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Michael G. LaRow, Mitex, Inc., 91 Newbury Street, Boston, MA 02116.

i. Comment Date: March 6, 1986.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Newburgh Lock and Dam and would consist of: (1) A new submerged powerhouse that would replace approximately 100 feet of the existing dam and spillway adjacent to the left abutment and that would house two 24,000 kW generators for a total generating capacity of 48,000 kW; (2) a proposed 69-kV transmission line approximately four miles long; and (3) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 180,000 MWh. All project energy would be sold to a local utility.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $100,000.

13a. Type of Application: New License over 5MW.

b. Project No.: 5776–000.
c. Date Filed: August 21, 1985.
d. Applicant: Niagara Mohawk Power Corporation.
e. Name of Project: Hudson Falls Project (formerly the Baker Falls and Moreau Developments of the Hudson River Project No. 2482).
f. Location: On the Hudson River in the Village of Hudson Falls and the Towns of Moreau and Kingsbury, Saratoga and Washington Counties, New York.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: John H. Terry, Senior Vice President, General Counsel, and Secretary, 300 Erie Boulevard West, Syracuse, NY 13202.
i. Comment Date: March 7, 1986.
j. Description of Project: The existing project consists of the following two developments:

Moreau: The development comprises a 770-foot-long and 23-foot high dam, shared with the Bakers Falls development across the river. It is a concrete gravity structure with headgate works at the right bank for the Moreau plant. A 900-foot-long forebay canal parallel with the right bank of the river has a 348-foot spillawy section mounted with 1.5-foot flashboards, a 385-foot non-overflow section and a 167-foot intake gate structure, all of concrete gravity construction. In addition to the three penstocks now in use, the intake gate structure encases four other penstock section which are gated and blocked off. Water is supplied to the powerhouse through two 12-foot diameter and one 5-foot diameter steel penstocks. The latter is for the hydraulic-driven exciter. The 62-foot by 97-foot powerhouse contains two turbines and two generators with total installed capacity of 4,800 kilowatts.

Bakers Falls: The development is located on the left bank of the river opposite the Moreau development with which it shares the dam described above. The headgate structure and the canal forebay walls are of concrete gravity construction. The 570-foot-long forebay canal has an overflow spillway section about 135 feet long directly below the headgate house. Water for the turbines is supplied through three 8-foot diameter steel penstocks. The 68-foot by 49-foot powerhouse contains three turbines and three generators with a total capacity of 2,250 kilowatts, operating under a gross head of 56 feet. Also included are appurtenant transmission facilities.

The redeveloped project would consist of: (1) The existing 770-foot-long, 23-foot-high concrete gravity dam and new 50-foot-long section to seal off the Baker Falls Power Canal; (2) a reservoir having a surface area of 103.3 acres, a storage capacity of 413 acre-feet, and a normal water surface elevation of 207.0 feet USGS datum; (3) the existing 900-foot-long Moreau Power Canal; (4) a new intake structure consisting of three fixed roller lift gates; (5) three new 50-foot-long steel penstock, two being 18 feet in diameter and one being 14 feet in diameter; (6) a new replacement powerhouse containing three generating units having a total installed capacity of 36.1–MW; (7) a new tailrace; (8) a new 3,960-foot-long 34.5–kV transmission line; and (9) appurtenant facilities. The Applicant estimates the average annual generation would be 170,000,000–kWh. The existing Baker Falls development would be removed and no redevelopment or power generation would occur at that site.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act. Based on the license expiration of May 18, 1984, the Applicant's estimated net investment in the project would amount to $3,023,000, and the estimated severance damages would amount to $50,750,000.

k. Purpose of Project: All project energy generated would be utilized by the Applicant for sale to its customers.
l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

14a. Type of Application: New License (over 5 MW).
b. Project No.: 5461–000.
c. Date Filed: October 8, 1981.
d. Applicant: Niagara Mohawk Power Corporation.
e. Name of Project: South Glens Falls (formerly the South Glens Falls Development of the Hudson River Project No. 2482).
f. Location: On the Hudson River near the Towns of Moreau and Queensbury, the City of Glens Fall, and The Village of South Glens Falls, Warren and Saratoga Counties, New York.
g. Filed Pursuant to: Federal Power Act 16, U.S.C. 791(a)—825(r).
h. Contact Person: John H. Terry, Senior Vice President, General Counsel, and Secretary, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, NY 13202.
i. Comment Date: March 7, 1986.
j. Description of Project: The existing project consists of: *South Glens Falls:* a gravity multiple-arch dam, 518 feet long and 10 feet high, mounted with 5-foot flashboards, which is jointly owned by the Applicant and Finch, Pruyn & Company, Inc., The Applicant's section of the dam is 330-foot-long. There is a long sluice near the northerly end of the dam and an ice sluice at the southerly end of the headgate structure. A 137-foot-long headgate structure at the southerly end of the dam is of concrete gravity construction from which two 12-foot diameter steel penstocks lead to the powerhouse. At the headgage structure there are four other penstock openings blocked off with timber bulkheads. A concrete retaining wall extends from the southerly end of the headgate structure to a dike on the right bank of the river. The 64-foot powerhouse contains two turbines and two generators with combined capacity of 3,800 kilowatts. Also included are appurtenant transmission facilities.

The redeveloped South Glens Falls Project would consist of: (1) The existing 510-foot-long, 10-foot-high concrete gravity multiple arch dam; (2) 5-foot-high flashboards; (3) a reservoir having a surface area of 167-acres, a storage capacity of 1,083 acre-feet, a normal water surface elevation of 269.1 feet U.S.G.S. datum; (4) the existing intake will be replaced with a new intake containing two verticial roller lift gates; (5) two new 250-foot-long, 16-foot-diameter steel penstocks; (6) a new powerhouse replacing the existing powerhouse containing two generating units having a total installed capacity of 12,000–kW; (7) a new 170-foot-long, 30-foot-deep, and 60-foot-wide tailrace; (8) a new 100-foot-long 34.5-kV transmission line; and (9) appurtenant facilities. The Applicant estimates the average annual generation would be 51,500,000–KWh.

The existing project would also be subject to Federal take-over under Sections 14 and 15 of the Federal Power Act. Based on the license expiration of May 18, 1984, the Applicant's estimated net investment in the project would amount to $1,444,796, and the estimated severance damages would amount to $24,780,000.

k. Purpose of Project: All project energy generated would be utilized by the Applicant for sale to its customers.
l. This notice also consists of the following standard paragraphs: A3, A7, B, C.

15a. Type of Application: Preliminary Permit.
b. Project No.: 9465–000.
c. Date Filed: September 16, 1985.
d. Applicant: Francis A. Smith.
e. Name of Project: Squire Creek.
f. Location: On Squire Creek, a tributary of the Stillaguamish River within the Mount Baker-Snoqualmie National Forest near Darrington, Snohomish County, Washington.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Contact Person: Mr. Francis A. Smith, 3611 23rd Avenue West, Seattle, WA 98199.

i. Comment Date: March 7, 1986.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high diversion dam at elevation 1,680 feet; (2) a 2.8-mile long penstock; (3) a powerhouse containing two generating units with a total rated capacity of 9,700 kW; and (4) a 6,000-foot-long transmission line. Applicant estimates the average annual energy production to be 85.1 GWh. A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $100,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power produced is to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

16a. Type of Application: New License.

b. Project No. 2431–005.

c. Date Filed: December 27, 1984.

d. Applicant: Central Maine Power Company.

e. Name of Project: West Buxton Project.

f. Location: on the Saco River in the Towns of Buxton, Hollis, and Standish, York and Camberland Counties, ME.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Contact Person: Ralph L. Bean, Vice President, Engineering Central Maine Power Company, Edison Drive, Augusta, ME 04336.

i. Comment Date: March 7, 1986.

j. Description of Project: The existing project consists of: (1) A concrete gravity dam about 585 feet long, and about 30 feet high, consisting of two overflow sections with a total crest length of 333 feet (topped with 4-foot-high pintype flashboards), a gated section containing a 20-foot-wide vertical lift gate, two 40-foot-wide stanchion sections, an 11-foot-wide log sluice section, two gates regulating the flow of water to the lower powerhouse and five gate openings (two are sealed by stop logs) admitting water to the upper powerhouse; (2) a reservoir extending upstream 1.5 miles, and having a surface area of 131 acres at normal pool elevation of 177.8 feet (U.S.G.S. datum); (3) an upper powerhouse integral with the dam containing two generating units rated at 750-kW each and one rated at 1,125-kW; (4) a 241-foot-long concrete conduit leading from the intake structure to a surge chamber and thence to the lower powerhouse; (5) a lower powerhouse containing a generating unit with a capacity of 4,000-kW; (6) the 2.3-kV generator leads from the three units of the upper powerhouse to the 2.3/38-kV step-up transformer in the upper powerhouse; (7) the 2.3/38-kV step-up transformer in the upper powerhouse; (8) the 11-kV generator leads from the unit at the lower powerhouse to the 11/38-kV step-up transformer in the lower powerhouse; (9) the 11/38-kV step-up transformer in the lower powerhouse; (10) the 39-kV connections from the upper and lower powerhouse to the West Buxton switching station; and (11) appurtenant facilities:

The estimated average annual operation is 33,000,000 kWh. The Licensee proposes to make no changes to the existing project in this application for new license.

Project No. 2531 would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act. The Applicant has calculated that the estimated net investment in the project would amount to $2,229,803. The Applicant's estimated severance damages would amount to $167,619,086.

k. Purpose of Project: All project energy would be utilized by the Licensee for sale to its customers.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C.

17a. Type of Application: Preliminary Permit.

b. Project No.: 9430–000.

c. Date Filed: September 4, 1985.

d. Applicant: Brighten Hydro Limited.

e. Name of Project: Structure 65–E Hydroelectric.

f. Location: On Kissimee Canal in Okeechobee and Highlands Counties, Florida.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, 1350 New York Avenue, #600, Washington, DC 20005.

i. Comment Date: March 7, 1986.

j. Description of Project: The proposed would utilize the existing U.S. Army Corps of Engineers' drop Structure 65–E would consist of: (1) A proposed steel penstock, 25 feet long and 6 feet in diameter; (2) a proposed powerhouse, 50 feet by 30 feet in plan dimensions, and housing a single generating unit with a rated capacity of 2,350 kW; (3) an existing concrete tailrace section, approximately 47 feet long and 30 feet wide; (4) a proposed 125-foot-long, 12.5 kV transmission line; and (5) appurtenant facilities. The Applicant estimates the average annual generation to be 7.0 GWh.

k. Purpose of Project: The project power would be sold to Florida Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, the Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $140,000.

18a. Type of Application: Amendment of License.

b. Project No.: 2835–001.

c. Date Filed: September 30, 1985.

d. Applicant: New York State Electric & Gas Corporation (Licensee).

e. Name of Project: Rainbow Falls.

f. Location: Ausable River and Black Brook, Clinton and Essex Counties, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ms. K.L. Small, New York State Electric & Gas Corporation, 4500 Vestal Parkway East, Binghamton, NY 13903.

i. Comment Date: February 28, 1986.

j. Description of Amendment: On September 30, 1985, Licensee filed a request to remove lands from the project boundary of the Rainbow Falls Hydroelectric Project No. 2835. Licensee intends to convey a parcel of land, known as the Taylor Pond property, to the State of New York.

In order to remove lands from the project boundary, the license must be amended to exclude the lands. Licensee states that, while the lands to be removed were originally included in the project for flow augmentation, in practice they have not been used for that purpose. Increased recreational use of Taylor Pond and an agreement with the State of New York limiting water level changes in Taylor Pond have prevented Licensee from using the pond for its original purpose.

Licensee further states that, because the State of New York intends to develop the area for primitive camping (as the surrounding area is currently used), the conveyance of the lands is consistent with Exhibit R, the recreation report of the current license.

k. This notice also consists of the following standard paragraphs: B and C.

19a. Type of Application: Minor License.

b. Project No.: 8958–000.

c. Date Filed: February 15, 1985.

d. Applicant: Hydro Development Incorporated.

e. Name of Project: Macallem Dam.

f. Location: On the Lamprey River in Rockingham County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John N. Webster, P.O. Box 1073, Dover, NH 03820.

i. Comment Date: February 27, 1986.

j. Competing Application: Project No. 6602–003, Date Filed: January 28, 1985.

k. Description of Project: The proposed run-of-river project would consist of: (1) The existing 27-foot-high and 73-foot-long stone masonry Macallen Dam; (2) new 2-foot-high flashboards; (3) an existing 77-foot-long earth-filled section at the right of the dam; (4) a reservoir with a surface area of 140 acres; (5) an existing fish ladder; (6) an existing intake structure; (7) a new forebay; (8) a new powerhouse with a 600-kW turbine-generator unit; (9) an existing tailrace; and (10) other appurtenances. Applicant estimates an average, annual generation of 2,300,000 kWh. The existing facilities are owned by the Essex Group, Inc.

l. Purpose of Project: Project energy would be sold to the Public Service Company of New Hampshire.

m. This notice also consists of the following standard paragraphs: A4, B, C, and D1.

20 a. Type of Application: Amendment of Exemption from Licensing—5MW or less.

b. Project No.: 2695–002.

c. Date Filed: October 22, 1985.

d. Applicant: Hydro Development Group Inc.

e. Name of Project: Dexter.

f. Location: Black River, Jefferson County, New York.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708, *as amended*).

h. Contact Person: Mr. John T. Bedard, Hydro Development Group Inc., Box 58, Dexter, New York 13634 phone (315) 639–6700.

i. Comment Date: March 5, 1986.

k. Description of Project: The project consists of: (1) Three existing concrete gravity dams, one 12 feet in height and 142 feet in length, one 8 feet in height and 145 feet in length, and one 12 feet in height and 433 feet in length, each with 30-inch flashboards; (2) an existing 120-acre reservoir at an elevation of 262 feet mean sea level; (3) three existing powerhouses containing six existing turbine generators having a combined capacity of 2320 kW operating at a hydraulic head of 14 feet. The proposed improvements consist of: (1) Proposed structural modification to two existing flumes; (2) the proposed retirement of three existing turbine/generator units with a total capacity of 1600 kW; (3) six proposed turbine/generator units with a total capacity of 3750 kW, operating under 14-foot hydraulic head; (4) a proposed 4500 kVA, 2.4kV/24kV electrical substation; (5) three proposed 2.4kV transmission lines, two of 550-foot length and one of 50-foot length; and (6) appurtenant facilities.

l. Purpose of Project: Project power will continue to be sold to Niagara Mohawk Power Corporation.

m. This notice also consists of the following standard paragraphs: B, C, D3a.

21 a. Type of Application: Declaration of Intention.

b. Project No.: EL86–12–000.

c. Date Filed: November 29, 1985.

d. Applicant: Earl Ausman & Associates.

e. Name of Project: South Fork Eagle River.

f. Location: On the South Fork Eagle River in the Greater Anchorage Area Borough, Alaska.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Contact Person: Earl V. Ausman, 3909 Geneva Place, Anchorage, AK 99508.

i. Comment Date: March 6, 1986.

j. Description of Project: The proposed project would consist of: (1) An 8-foot-high, 45-foot-long timber diversion dam at elevation 1,185 feet; (2) a 3,900-foot-long, 32-inch-diameter steel penstock; (3) a 20-foot by 36-foot powerhouse at elevation 800 feet containing two or three generating units with a total rated capacity of 1,100 kW; and (4) a 7.2-kV transmission line connecting to the Matanuska Electric Association distribution system.

A Declaration of Intention requests that the Commission commence an investigation to determine if it has jurisdiction over a particular hydroelectric project.

k. Purpose of Project: Power would be sold to the Matanuska Electric Association, which is not connected to any interstate power transmission system.

l. This notice also consists of the following standard paragraphs: B, C, D2.

22 a. Type of Application: Conduit Exemption.

b. Project No.: 9281–000.

c. Date Filed: June 7, 1985.

d. Applicant: Utah Power and Light Company.

e. Name of Project: Santa Clara Project.

f. Location: On the Santa Clara River, in Washington County, Utah; Sections 15, 21, 22, 28, 29, and 32 of Township 39 S, Range 16 W; Sections 5, 6, 7, 8, 18, and 19 of Township 40 S, Range 16 W; and Sections 12, 13, 14, 25, 26, 27, and 28 of Township 40 S, Range 17 W. Salt Lake City Base and Meridian.

g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a)

h. Contact Person: Jody L. Williams, Esquire, Utah Power and Light Company, 1407 West North Temple, Salt Lake City, UT 84116, (801) 535–2851.

i. Comment Date: March 7, 1986.

j. Description of Project: The proposed project would utilize Applicant's existing 15.4-mile-long Santa Clara Aqueduct, 6-foot-high Santa Clara Dam, 3.5-foot-high Veyo Dam, and 2.3-kV transmission line and would consist of: (1) An existing 22-inch-diameter, 1,270-foot-long penstock; (2) the existing 500-kW Santa Clara Generating Unit No. 1; (3) an existing 30-inch-diameter, 13,250-foot-long-penstock; (4) the existing 800-kW Santa Clara generating unit No. 2; (5) an existing 4,045-foot-long, penstock, varying in diameter from 22 inches to 30 inches; and (6) the existing 750-kW Gunlock Generating Unit to be rehabilitated to 800 kW.

The project would be partially located on U.S. Bureau of Land Management lands.

The estimated 4.67 GWh generated annually by the project would be utilized by the Applicant to satisfy its customers' needs.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

23a. Type of Application: Preliminary Permit.

b. Project No.: 9442–000.

c. Date Filed: September 9, 1985.

d. Applicant: Edwin H. Knott, Jr. and Lee A. Mitchell.

e. Name of Project: Sprite Creek.

f. Location: On Sprite Creek, in Fulton County, Near Stratford, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Edwin H. Knott, Jr. P.O. Box 92 Mayfield, NY 12117.

i. Comment Date: March 6, 1986.

j. Competing Application: Project No. 9146–000, Dated Filed: May 1, 1985.

k. Description of Project: The proposed project would consist of: (1) An existing dam approximately 350 feet long and 40 feet high composed of natural roch and concrete; (2) and existing 1,222 acre reservoir with normal surface elevation of 1,543 feet m.s.l., and a storage capacity of 6,244 acre-feet; (3) approximately 18,500 feet of proposed 60-inch-diameter penstock; (4) an existing powerhouse, approximately 60 feet long and 30 feet wide will be rehabilitated to include a total installed generating capacity of 4.7 MW; (5) another proposed generating unit to be located at the existing dam, for conservation releases which will have a capacity of 14 kW; (6) a proposed 12,500-volt transmission line approximately 5,500 feet in length; (7) and appurtenant facilities. The Applicant estimates that the average annual energy generation would be 16,123 MWh. The owner of the dam is the New York State Department of Environmental Conservation.

l. Purpose of Project: The Applicant anticipates that energy will be sold to the Niagara Mohawk Power Corporation.

m. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

n. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $30,000.

Standard paragraphs:

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development applicaton or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

D1. *Agency Comments*—Federal State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If any agency does not file comments with the Commission within the time set for filing comments,

it will be presumed to have no comments. One copy of an agency's comments must also be set to the Applicants representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: January 28, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2222 Filed 1-31-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-262-000 et al.]

Natural Gas Certificate Filings; Southwest Gas Corp. et al.

January 27, 1986.

Take notice that the following filings have been made with the Commission:

1. Southwest Gas Corporation

[Docket No. CP86-262-000]

Take notice that on January 10, 1986, Southwest Gas Corporation (Southwest), P.O. Box 15015, Las Vegas, Nevada 89114, filed in Docket No. CP86-262-000 a request pursuant to section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap and appurtenant facilities in order to sell and deliver natural gas to Silver Springs/Stagecoach Clinic (SSSC), a new retail customer, under the certificate issued in Docket No. CP84-739-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southwest requests authorization to construct and operate a sales tap to sell natural gas to SSSC, a retail customer not presently served by Southwest at any other location. Southwest states that SSSC is a hospital clinic located in the Silver Springs/Stagecoach area of Lyons County, Nevada, and has requested that Southwest provide it with natural gas service. Southwest further states that the volumes of natural gas to be delivered would be for Priority 1 use as that priority is defined in the Commission's order No. 467-B. Southwest estimates it would deliver 370 Mcf of natural gas per year through the proposed sales tap to SSSC and 3 Mcf on a peak day.

Southwest indicates that it would construct the tap and appurtenant facilities at a point on its northern Nevada system facilities in Lyon County, Nevada. Southwest estimates the total cost of constructing the facilities to be $3,014, for which Southwest would be reimbursed by SSSC.

Southwest states that service to SSSC would be rendered under the regulatory authority of the Public Service Commission of Nevada (PSCN) and in accordance with its rate schedules on file with the PSCN. Southwest asserts it has sufficient capacity available to provide for the proposed deliveries without any detriment or disadvantage to any of its existing customers and that the relatively small volumes of natural gas to be delivered to SSSC would not affect its ability to serve its existing customers.

Comment date: March 13, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. American Distribution Co. (Alabama Division)

[Docket No. CP86-263-000]

Take notice that on January 10, 1986, American Distribution Company (Alabama Division) (Applicant), 333 Clay Street, Suite 1234, Houston, Texas 77002, filed in Docket No. CP86-263-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a sales tap and for amendment to its existing transportation certificate, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it intends to construct and operate a sales tap and appurtenant facilities at a point along its 40-mile jurisdictional pipeline which would permit delivery of up to 3,000 Mcf of gas per day to the municipal facilities of the City of Citronelle, Alabama, for ultimate delivery to Kerr-McGee Chemical Corporation, an industrial customer situated near Citronelle's system. Applicant further states that it seeks authorization to add the Citronelle sales tap as the point of delivery for the account of Collet Ventures, Inc., of up to 3,000 Mcf of natural gas per day, but requests no change in its existing authorization to transport up to 5,000 Mcf of gas per day for the account of Collet to an existing point of interconnection with the facilities of Florida Gas Transmission Company.

Applicant indicates that the requested facilities would cost an estimated

$18,750, which would be financed from funds on hand.

Comment date: February 18, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. National Fuel Gas Supply Corporation

[Docket No. CP86-261-000]

Take notice that on January 9, 1986, National Fuel Gas Supply Corporation (Applicant), 1100 State Street, Erie, Pennsylvania 16501, filed in Docket No. CP86-261-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas for resale to certain of its existing firm customers on a long-term interruptible basis, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has recently contracted to serve or begun serving six firm customers under its Rate Schedules CDS (1 through 7) pursuant to authorization in Docket Nos. CP84-7-002 and CP84-7-003 (27 FERC ¶ 61,426) and CP84-724-000 (29 FERC ¶ 61,376). Applicant further states that many of these firm customers have requested the opportunity to purchase additional volumes from Applicant on an interruptible long-term basis when Applicant may, from time to time, have volumes available for sale.

Applicant proposes to make sales pursuant to a new Rate Schedule SI, Systems Interruptible Service, which would provide for sales to Applicant's firm customers (excepting full requirements customers)[1] when Applicant has available gas not required for its operations and delivery obligations. Applicant states that when such gas is available for sale, it would first be offered under Rate Schedule SI to firm customers in proportion to their respective maximum daily quantity (MDQ), before being made available for sale pursuant to Applicant's Rate Scehdule I-1 customers. In order that Applicant's firm customers would not be adversely affected, Applicant states that all sales would be subject to curtailment or interruption at any time. It is explained that sales would be made pursuant to advance arrangements only and on any day when the purchaser had taken its MDQ under the purchaser's firm gas sales contract with Applicant.

Applicant proposes that the rates to be charged under Rate Schedule SI would be equal to the commodity portion of Applicant's RQ rate for sales during the period, April 1 through October 31 of each year, and equal to the rate under Applicant's Rate Schedule I-1 (which is Applicant's 100 percent load factor rate) for sales during the period, November 1 through March 31 of each year.

Applicant states that the commodity portion of Applicant's RQ rate is now $3.1631 per dt equivalent of gas and the I-1 rate is $3.3621 per dt equivalent. Applicant further states that until rates become effective pursuant to a Natural gas Act section 4 proceeding, Applicant proposes to retain the revenues attributable to the proposed sales in accordance with the settlement reached in Applicant's Docket Nos. RP83-63-000, RP83-673-001 and RP83-105-000.

Applicant also states that the source of the gas proposed to be sold would be Applicant's general system supply. The volumes of gas sold would be delivered to purchasers through the facilities of Transcontinental Gas Pipe Line Corporation (Transco); Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee); and/or Texas Eastern Transmission Corporation (TETCO). Applicant further states that in the event Applicant would be directly or indirectly providing storage service for a purchaser, delivery to such purchaser may be made at an undesignated location in Applicant's facilities used for such storage. Applicant states that it is not aware of any need for new facilities to provide interruptible transportation between Applicant's facilities and those of purchasers. Deliveries for transportation would be made to:

(1) Transco at theWharton interconnection in Potter County, Pennsylvania;

(2) Tennessee at the Ellisburg interconnection in Potter County, Pennsylvania; and/or

(3) TETCO at the Windridge interconnection in Greene County, Pennsylvania.

Gas would be redelivered by such transporters at existing delivery points in the purchaser's service territory.

Comment date: February 18, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Transcontinental Gas Pipe Line Corp.

[Docket No. CP86-236-000]

Take notice that on December 12, 1985, Transcontinental Gas Pipe Line Corportation (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP86-236-000 an application pursuant to seciton 7(b) of the Natural Gas Act for permission and approval to abandon natural gas transportation for Natural Gas Pipeline Company of America (Natural) under a service agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it presently renders natural gas transportation for Natural under Rate Schedule X-210 to its FERC Gas Tariff, Original Volume No. 2, which provides for transportation on a firm basis of a daily contract demand of 24,760 Mcf of gas from Ship Shoal Block 269, offshore Louisiana, to four points of interconnection with Natural in Louisiana and Texas. Applicant states that the subject application for abandonment authorization is being made in conjunction with a memorandum of understanding dated April 6, 1984, between Applicant and Natural (memorandum) which was the result of settlement negotiations between the two companies in connection with Transco's general rate case in Docket Nos. RP83-11 and RP83-30. Applicant states that as part of the consideration of Natural under the memorandum it seeks the authority requested herein, subject to Natural's receipt of Commission approval of the consideration it is providing to Applicant.

More specifically, Applicant seeks authority to abandon service to Natural, currently provided under Rate Schedule Xi210, in two stages: (1) Partially abandon service effective April 1, 1984, to effectuate a reduction in service from the presently authorized daily contract quantity of 24,760 Mcf to 15,000 Mcf; and (ii) completely abandon service effective April 1, 1985. Applicant states that abandonment of the subject transportation service would allow it to fulfill partially its obligations to Natural under the memorandum.

Comment date: February 18, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Transcontinental Gas Pipe Line Corporation

[Docket No. CP86-237-000]

Take notice that on December 12, 1985, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP86-237-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon natural gas transportation for Natural Gas Pipeline Company of America (Natural) under a service

[1] Applicant states that under Rate Schedule SI, gas is unavailable to Applicant's full requirements customers because such customers can obtain their full requirements on a firm basis at any time at rates equal to or less than rates applicable to interruptible sales under Rate Schedule SI.

agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it presently renders natural gas transportation for Natural under Rate Schedule X–75 to its FERC Gas Tariff, Original Volume No. 2, which provides for transportation on a firm basis of a daily contract demand of 10,000 Mcf of gas from High Island Block 22–L, offshore Texas, to a point of interconnection with Natural in Cameron Parish, Louisiana. Applicant states that the subject application for abandonment authorization is being made in conjunction with a memorandum of understanding, dated April 6, 1984, between Applicant and Natural (memorandum) which was the result of settlement negotiations between the two companies in connection with Transco's general rate case in Docket Nos. RP83–11 and RP83–30. Applicant states that as part of the consideration to Natural under the memorandum it seeks the authority requested herein, subject to Natural's receipt of Commission approval of the consideration it is providing to Applicant.

More specifically, Applicant seeks authority to abandon service, either partially or totally, to Natural, currently provided under Rate Schedule X–75, at one or more points in time in the future when Natural, subject to certain conditions, elects to reduce the daily contract demand quantity under such agreement or to terminate such. Applicant states that abandonment of the subject transportation service would allow it to fulfill partially its obligations to Natural under the memorandum.

Comment date: February 18, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Transcontinental Gas Pipe Line Corporation

[Docket No. CP86–260–000]

Take notice that on January 6, 1986, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP86–260–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain compression and appurtenant facilities in offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Transco proposes to abandon a skid-mounted 78 horsepower natural gas compressor, a meter and regulator used to measure the compressor fuel and appurtenant facilities, all located on the Odeco Oil and Gas Company's (Odeco) OBM#1 production platform in South Pelto (SP) Block 19, offshore Louisiana. Transco states that the facilities were originally installed in anticipation that the maximum operating pressure of Transco's Southeast Louisiana lateral, on which Block SP 19 is located, would have to be increased from 1,000 psig to 1,250 psig in order to accommodate greatly increased volumes of natural gas. However, Transco explains, such increase in the pressure of the Southeast Louisiana lateral was never necessary and the subject facilities have rarely been used.

Transco states that it intends to salvage the compressor unit, meter, regulator and appurtenant facilities from SP 19 for possible use at other locations. In addition, it is explained, Odeco has informed Transco that due to the recent loss of an adjacent header platform during Hurricane Juan, it has an immediate need for the space on the OBM#1 platform which is presently occupied by the facilities sought herein to be abandoned by Transco. Transco estimates that the cost of removal of these facilities would be $15,000 with a salvage value of $78,000.

Comment date: February 18, 1986, in accordance with Standard Paragraph F at the end of this notice.

7. Transcontinental Gas Pipe Line Corp.

[Docket No. CP86–265–000]

Take notice that on January 10, 1986, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP86–265–000 an application pursuant to section 7 of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas for Union Gas Company (Union), on behalf of the New Jersey Zinc Company, Inc. (New Jersey Zinc), and for permission and approval to abandon such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco requests authority to transport up to the dekatherm equivalent of 4,000 Mcf of gas per day, on an interruptible basis, pursuant to a transportation agreement between Transco, New Jersey Zinc and Union. It is explained that the gas which New Jersey Zinc would purchase from Transco Energy Marketing Company (TEMCO) would be delivered to Transco at the existing points of interconnection between Transco and TEMCO, and equivalent quantities (less quantities retained for compressor fuel and line loss make-up) would be redelivered, on an interruptible basis, at the existing point of delivery to Union at Palmerton near Wind Gap, Monroe County, Pennsylvania; and Union would in turn redeliver such gas to New Jersey Zinc's plant in Palmerton, Pennsylvania (Palmerton plant). The transportation rate for this service is pursuant to Transco's currently applicable Rate Schedule T–1 rate, it is stated.

Transco explains that the subject transportation would be in accordance with Transco's current transportation policy which, among other things, requires that New Jersey Zinc provide Transco with a monthly affidavit which states that, in absence of subsect transportation, New Jersey Zinc would not otherwise purchase equivalent quantities of gas from Union (which purchases gas from Transco and resells gas to New Jersey Zinc) because the Palmerton plant would be closed because of uneconomic energy costs.

Transco also requests flexible authority to add or delete sources of gas and/or receipt points on behalf of New Jersey Zinc. With respect to such flexible authority, Transco states that it would undertake within 30 days of the addition or deletion of any gas suppliers and/or receipt points, to file certain specified information with the Commission. Transco submits that any changes made pursuant to such flexible authority would be on behalf of the same end user, New Jersey Zinc, for use at the same end-use location and would remain within the daily maximum transportation volumes proposed in the subject application.

Transco states that the transportation agreement would continue in effect for a primary term ending on December 31, 1986, and year to year thereafter unless terminated by any party giving prior written notice to the other parties of not less than 60 days prior to the end of a calendar year, which termination may be made effective at the end of said primary term or at the end of any year thereafter. Also, it is stated that Transco has the right to terminate the agreement at any time if New Jersey Zinc does not provide the monthly affidavit referred to above. Because of the limited-term nature of the subject transportation arrangement, Transco states in the application that it is requesting pre-granted authority to abandon the transportation service proposed herein at the time of termination of the transportation agreement.

Transco further states that by filing the subject application, it is not electing "non-discriminatory access" as such

term is described and defined in §§284.8(b) and 284.9(b) of the Commission's Regulations promulgated by Order No. 436.

Comment date: February 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2224 Filed 1-31-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

National Energy Extension Service Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: National Energy Extension Service Advisory Board.

Date and Time: Thursday, February 20, 1986, 8:00 a.m.-5:00 p.m.; Friday, February 21, 1986, 8:00 a.m.-12:00 noon.

Place: The Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Contact: Susan D. Heard, Department of Energy, Forrestal Building-6A081, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: 202-252-8292.

Purpose of the Board

The Board was established to carry on a continuing review of the National Energy Extension Service and the plans and activities of each State in implementing Energy Extension Service programs. Additionally, the Board is responsible for reporting on an annual basis to the Congress, the Secretary of Energy, and the Director of the Energy Extension Service.

Tentative Agenda

Thursday, February 20, 1986

- Overview of EES Program
- Briefing on energy education programs
- Review of and revisions to draft Seventh Annual Report
- Public Comment (10 minute rule)

Friday, February 21, 1986

- Revisions to draft of Seventh Annual Report
- Acceptance of Seventh Annual Report
- Public comment (10 minute rule).

Public Participation

The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Susan D. Heard at 202-252-8292. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday thru Friday, except Federal holidays.

Issued at Washington, DC, on January 29, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 86-2291 Filed 1-31-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of December 16 Through December 20, 1985

During the week of December 16 through December 20, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Lawrence L.P. Gas Service, 12/19/85; HRA-0010

Lawrence L.P. Gas Service filed an Appeal from a Modified Remedial Order (MRO) changing the remedial provisions of a Remedial Order (RO) issued to it. The RO ordered Lawrence to roll back prices to its customers in order to compensate for overcharges. Stating that Lawrence had not complied with the conditions of the RO, the MRO required the firm to remit the overcharge amount, plus interest, directly to the Department of Energy for distribution pursuant to 10 CFR Part 205, Subpart V. The MRO also altered the method to be used to calculate accrued interest on the overcharge amount. The DOE rejected Lawrence's contentions that (1) the enforcement action was barred due to unreasonable delay, (2) the overcharge amount was overstated, (3) the price regulations were unintelligible, and (4) the MRO was unenforceable because Lawrence's overcharged customers would not benefit from Lawrence's compliance with the MRO. Accordingly, the MRO was issued as a

final Remedial Order and Lawrence was ordered to remit $63,056.31 plus accured interest to the Department of Energy.

Mockabee Gas and Fuel Oil Company, 12/19/85; HRA-0014

Mockabee Gas and Fuel Oil Company filed an Appeal of a Modified Remedial Order (MRO), changing the remedial provisions of a Remedial Order (RO) issued to it. The RO ordered the firm to roll back prices to its customers, in order to compensate for overcharges. After stating that Mockabee failed to comply with the remedial provisions of the RO, the MRO required the firm to remit the overcharge amount to the DOE for distribution pursuant to 10 CFR Part 205, Subpart V. The MRO also altered the applicable interest rate of the overcharges. In considering Mockabee's appeal, the DOE found that the firm had failed to substantiate its claim that it had complied with the terms of the RO. Accordingly, the MRO was issued as a final Remedial Order and Mockabee was directed to remit $75,654.54, plus interest, to the DOE.

Requests for Exception

Holy Cross Hospital, 12/16/85; HEE-0163

Holy Cross Hospital filed an application seeking exception from the regulations at 10 CFR Part 455 which govern the Department of Energy's Institutional Building Grants Program. These regulations require that hospital and school buildings which are the subject of grant requests be occupied on or before April 20, 1977. Holy Cross stated in its application that the Sylmar earthquake had destroyed one of its buildings and that the structure had not been renovated until May 1977, one month after the date specified in the regulations. The DOE determined that the application of the Part 455 regulatory base date to Holy Cross Hospital resulted in a "gross inequity" which warranted approval of exeption relief. Accordingly, the Holy Cross Hospital Application for Exception was granted.

LBM Distributors, Inc, 12/16/85; HEE-0162

LBM Distributors, Inc. filed an Application for Exception seeking relief from the requirement that it prepare and file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report" with the DOE Energy Information Administration. In considering the request, the DOE found that there was some merit to the firm's contention that it was burdened by the requirement that it file the form. The DOE noted that the firm's secretary, the only employee familiar with the format of EIA-782B, was to undergo surgery in August 1985 and would be unable to return to her job until October 1985. After balancing this burden against the public interest in gathering reliable energy data, the DOE determined that a limited form of exception relief was appropriate. Accordingly, the exception relief was granted to remove LBM from the list of firms required to submit data on Form EIA-782B to the Energy Information Administration for the months of July 1985 through October 1985.

Request for Temporary Exception

White Consolidated Inc., 12/20/85; KEL-0001

White Consolidated, Inc. filed Applications for Exception and Temporary Exception from the provisions of 10 CFR Subchapter D, Part 430, Subpart B, Appendix A1, in which the firm sought relief from the refrigerator test procedures for its Frigidaire Model FPCI18TDWO. In considering the request, the DOE found that White's adherence to the test procedure set forth in Appendix A1 would not produce accurate results. The DOE therefore determined that White had demonstrated a likelihood of success on the merits of its petition for waiver and that exception relief was in the public interest. Accordingly, the DOE granted temporary exception relief and proposed exception relief, allowing White to use a modified long-time automatic defrost test procedure.

Motion For Discovery

Canal Refining Company, Economic Regulatory Administration, 12/19/85; HRD-0290, HRH-0290, KRZ-0012

Canal Refining Company filed Motions for Discovery and Evidentiary Hearing in connection with a Proposed Remedial Order issued to it by the Economic Regulatory Administration. The Discovery Motion concerned the allegations in the PRO that Canal used reciprocal purchase/sale transactions to circumvent its obligations under the Entitlements Program and that Canal received excessive consideration for price-controlled crude oil in the form of deeply discounted striper well crude oil. The Office of Hearings and Appeals denied Canal's request for discovery regarding similar transactions by other refiners, because such information was irrelevant to the issue of whether Canal violated DOE regulations. The OHA also rejected the firm's request for information demonstrating that the enforcement proceeding was motivated by improper congressional influence, finding that Canal had not made even a threshold showing that such influence had been exerted. Canal's Motion for Evidentiary Hearing was denied on the grounds that the firm failed to identify any disputed factual issues to be resolved. Finally, the OHA granted an ERA Motion to introduce a different method of calculating the allegedly excessive consideration received by Canal for the stripper well crude oil from that set forth in the PRO.

Implementation of Special Refund Procedures

South Hampton Refining Company, 12/17/85; HEF-0222

The DOE issued a Decision and Order setting forth procedures to be used for distributing $325,000 plus accurred interest received from South Hampton Refining Company pursuant to a 1980 consent order. The consent order settled all disputes regarding South Hampton's compliance with the DOE petroleum price regulations. The funds will be available to customers who were injured as a result of their purchases of covered petroleum products from South Hampton during the consent order period. The Decision outlines specific information to be included in refund applications and discusses the presumptions and findings that the DOE will utilize in analyzing the applications.

Refund Applications

Aztex Energy Company/Quickway Market, et al., 12/17/85; RF73-1, et al.

The DOE issued a Decision and Order granting refunds from the Aztex Energy Company consent order fund to seven applicants that were resellers of Aztex motor gasoline, purchased during the January 1, 1979 through December 31, 1979 consent order period. All seven applicants received refunds on the basis of Aztex's alleged overcharges. Each of these refunds was under the $5,000 small claims threshold. In addition, two claimants received refunds based on allocation violations which Aztex allegedly committed during the consent order period. The refunds granted in this Decision and Order totaled $22,455.71 ($14,372.72 principal, plus $8,082.99 interest).

Gulf Oil Corporation/Augy's Gulf Service, et al., 12/19/85; RF40-500, et al.

The DOE issued a Decision and Order concerning 11 Applications for Refund filed by retailers and resellers that were direct purchasers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85.048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund claimed. After examining the applications and supporting documentation submitted by the applicants, the DOE concluded that they should receive a total refund of $21,738, representing $18,675 in principal and $3,063 in accrued interest.

Gulf Oil Corporation/Russell Stewart Oil Co., et al., 12/18/85; RF40-463, et al.

The DOE issued a Decision and Order concerning Russell Stewart Oil Co. and four other applicants that were direct purchasers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund claimed. After examining the applications and supporting documentation submitted by the applicants, the DOE concluded that they should receive a total refund of $185,869.44, representing $159,690.64 in principal and $26,178.80 in accrued interest.

Gulf Oil Corporation/Sun City Gulf, et al., 12/19/85; RF40-00227, et al.

The DOE issued a Decision and Order concerning 28 Applications for Refund filed by resellers and retailers of Gulf refined products, in accordance with the refund procedures established in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). In considering the Applications, the DOE that each of the applicants had demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the

refund claimed. Accordingly, the firms were granted refunds totalling $92,078 ($79,112 principal plus $12,966 interest).

Lewtex Oil & Gas Corporation/Gulf Oil Corporation, 12/19/85; RF9–1

The DOE issued a Decision and Order concerning an Application for Refund filed by Gulf Oil Corporation in connection with a consent order fund remitted by Lewtex Oil and Gas Corporation. Using a competitive disadvantage methodology, the DOE found that Gulf experienced an injury as a result of its propane purchases from Lewtex. The firm was therefore granted a refund of $2,082, plus interest, whti respect to that product. The DOE then found that since Gulf had incurred an injury in connection with 19.6 percent of its propane purchases from Lewtex, it should be presumed to have experienced ths same level of injury with respect to its purchases of other Lewtex NGLPs. Gulf was granted a refund of $3,371 for those purchases. Accordingly, Gulf was granted a refund of $5,453 plus interest of $4,580, or a total rerfund of $10,033. Finally, the DOE stated that Gulf's application was the only one filed in connection with the Lewtex fund and that $245,931.58 in principal remained in the Lewtex escrow account. Accordingly, the DOE announced that it would institute a second stage refund proceeding and seek comments from states and other interested parties regarding disbursement of these remaining funds.

Little America Refining Company/Dawson Tank Lines, Inc., et al., 12/19/85; RF112–83, et al.

The DOE issued a Decision and Order granting refunds from the Little America Refining Company (Larco) deposit escrow account to three resellers of Larco covered products. All three firms elected to limit their refund claims to the small claims threshold level of $5,000, and were therefore not required to submit detailed evidence of injury. The refunds to these firms total $22,026, representing $15,000 in principal and $7,026 in interest.

Little America Refining Company/Perkins Petroleum, Inc., et al., 12/16/85; RF112–55, et al.

The DOE issued a Decision and Order granting refunds from the Little America Refining Company (Larco) deposit escrow account to 45 purchasers of Larco covered products. All of the applicants submitted claims for less than the $5,000 threshold, and were therefore not required to submit detailed evidence of injury. The refunds to these firms total $85,848, representing $58,575 in principal and $27,273 in interest.

Mississippi River Transmission Corporation/Kerr-Mcgee Corporation, 12/19/85; RF66–1

Kerr-McGee Corporation filed an Application for Refund from the Mississippi River Transmission Corporation consent order fund. Since the firm limited its refund request to the small claims threshold of $5,000, it was not required to submit a detailed proof of injury. Accordingly, the DOE approved a refund of $5,000 plus accrued interest of $3,152.15 or a total of $8,152.15.

Navajo Refining, Inc., Kern Oil & Refining Company, USA Petroleum Corporation, Southland Oil Company/VGS Corporation, 12/16/85; RF171–29, RF171–24, RF171–25, RF171–28

The DOE directed immediate payment of claims that had been filed by certain recipients of exception relief from the Crude Oil Entitlements Program. In *Amber Refining, Inc.*, 13 DOE ¶85,217 (1985), the OHA approved 14 claims filed by holders of "entitlements exception relief receive orders" and segregated funds in the DOE's Deposit Fund Escrow Account sufficient to pay those claims into interest-bearing sub-accounts, under the names of each claimant. These four firms had obtained orders from United States District Courts directing the DOE to implement their entitlements exception relief, and the OHA ordered immediate payment to these firms.

R.V. Whitmer Thermogas Company/Pike-Delta-York Local Schools, 12/18/85; RF144–1

Pike-Delta-York Local Schools (PDYLS) filed an Application for Refund in which it sought a portion of the fund obtained by the DOE through a consent order entered into with R.V. Whitmer Thermogas Company. The DOE determined that PDYLS was and end user of the propane purchased from Whitmer and was therefore entitled to a refund. The DOE therefore granted PDYLS a refund of $1,568.75 in principal and $708.76 in accrued interest for a total refund of $2,277.51.

Tenneco Oil Company/Champlin Petroleum Company, Ashland Oil, Inc., Commonwealth Oil Refining Company, Inc., 12/20/85; RF7–57, RF7–60, RF7–79

Champlain Petroleum Company, Ashland Oil, Inc. and Commonwealth Oil Refining Company, Inc. filed Applications for Refund from a consent order fund made available by Tenneco Oil Company. The refiners requested refunds based upon claimed injuries related to Tenneco's possible violations of the DOE crude oil price regulations which allegedly affected them through the operation of the Crude Oil Entitlements Program, 10 CFR 211.67. The decision noted that the three refund applications could have been denied solely on the basis of DOE's Statement of Restitutionary Policy regarding crude oil overcharges whose impact was spread by operation of the Entitlements Program, 13 DOE ¶90,508 (1985). The DOE also found that although each firm presented evidence relating to its banks of unrecouped product increases, none presented evidence demonstrating that it was injured by Tenneco's alleged crude oil overcharges. The DOE therefore determined that the applications for refund should be denied.

U.S. Oil Company, Inc. Herbst Oil, Inc., Swifty Oil Company, Inc./Orbit Oil Company, 12/18/85; RF110–0002, RF159–0001.

Herbst Oil, Inc. filed an Application for Refund seeking a portion of the funds obtained by the DOE through a consent order entered into the U.S. Oil Company, Inc. Orbit Oil Company filed an Application for Refund seeking a portion of the funds obtained in a similar manner from Swifty Oil Company, Inc. Since the applicants' allocable shares of the available consent order funds were both less than the $5,000 small claims threshold established in the order implementing the U.S. Oil and Swifty refund procedures, Herbst and Orbit were not required to submit detailed evidence of injury. Accordingly, Herbst received a refund of $267 in principal and $138 in interest from the U.S. Oil fund, while Orbit received $385 in principal and $50 in interest from the Swifty fund.

Dismissals

The following submissions were dismissed:

Name and Case No.

Anthony Di Paula; RF215–1
Beffa's APCO; RF83–0025
Bennett's APCO; RF83–0041
Bill's APCO; RF83–0023
Charles J. Phillips; RF215–2
Culp's Oil Company; RF83–0039
Fleming Companies, Inc.; RF216–1
George's APCO Service; RF83–0032
Glenn's APCO; RF83–0035
J.J. APCO; RF83–0044
Jack's Truck Stop; RF83–0043
Jake's APCO; RF83–0033
Lawson's APCO; RF83–0024
Nuttle's APCO; RF83–0022
Paul's Pro Service; RF83–0027
Pete's APCO; RF83–0034
Pollocks Gulf Service; RF40–3069
Ranger Oil Company; RF83–0038
Robson Oil Company, Inc.; RF83–0037
Roby's Station; RF83–0042
Ron's APCO; RF83–0045
SO-CO Oil Company; RF83–0040
Whitey's APCO; RF83–0021

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: January 24, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86–2234 Filed 1–31–86; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeal, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from funds currently totalling approximately $15 million obtained from Earth Resources

Company/Delta Refining Company in settlement of all issues regarding the firm's application of the federal petroleum price and allocation regulations during the period August 19, 1973 through January 28, 1981.

DATE AND ADDRESS: Applications for refund must be postmarked by May 5, 1986, should conspicuously display a reference to case number HEF–0205, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Geoffrey D. Stein, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision and Order establishes procedures to distribute funds obtained as a result of a consent order between the DOE and Earth Resources Company/Delta Refining Company (ERC). The consent order settled all disputes between the DOE and ERC concerning possible violations of DOE price and allocation regulations with respect to the firm's sales of refined petroleum products to its customers during the period August 19, 1973 to January 28, 1981.

Any members of the public who believe that they are entitled to refunds in this proceeding may file Applications for Refund. Specific information to be included in Applications for Refund is set forth in Section III of the Decision and Order. All Applications should be postmarked by May 5, 1986, and should be sent to the address set forth at the beginning of this notice. Applications for refunds must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: Janaury 23, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

January 23, 1986.

Name of Case: Earth Resources Company.

Date of Filing: October 13, 1983.

Case Number: HEF–0205.

The procedural regulations of the Department of Energy (DOE) permit the Economic Regulatory Administration (ERA) to request that the Office of Hearings and Appeals (OHA) formulate and implement procedures for distributing funds received as a result of enforcement proceedings involving alleged violations of DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with these regulatory provisions, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order which it entered into with Earth Resources Company (ERC). Under the terms of the consent order, ERC agreed to refund a total of $15.3 million, including payments to the DOE, in settlement of all civil and administrative claims by the DOE relating to ERC's compliance with the federal petroleum price and allocation regulations applicable to refiners of petroleum products during the period August 19, 1973 through January 28, 1981 (the consent order period).

I. Background

ERC was a "refiner" of petroleum products as that term was defined in 10 CFR 212.31. During the consent order period, ERC was engaged in the production, refining and marketing of products covered by the federal petroleum price and allocation regulations set forth in 6 CFR Part 150 and 10 CFR Part 212.[1]

The ERA audited ERC to detrmine the firm's compliance with these regulations. During the course of the audit, ERC entered into a consent order with the DOE, whereby the firm agreed to refund a total of $15.3 million to various parties to resolve all issues regarding ERC's application of the regulations during the consent order period. Notice of this proposed consent order was published for public comment at 45 FR 81256 (1980). Comments were filed by seven interested parties. The proposed consent order was adopted without modification as a final order of the DOE on January 27, 1981. 45 FR 8647 (1981).

The consent order set forth various methods for refunding the settlement funds to different categories of ERC customers. ERC paid refunds to retail purchasers of motor gasoline at company-owned stations through a $5 million price reduction plan.[2] ERC also agreed to make $1,674,000 in refund payments to another ultimate consumer, the United States Defense Fuel Supply Center (DFSC).[3] ERC also deposited $7,875,000 into a DOE escrow account for distribution to other adversely affected purchasers of ERC refined petroleum products. Finally, in settlement of alleged violations of the DOE Crude Oil Entitlement Program, ERC paid $626,000 into the DOE escrow account.[4]

On October 11, 1985, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the ERC consent order fund. 50 FR 43449 (October 25, 1985).

In the PD&O, we described a two-stage process for disbursing refunds. In the first stage, refunds would be made to identifiable purchasers of ERC covered products that may have been injured by the firm's pricing practices during the consent order period. This decision describes the information that purchasers of ERC products should submit in order to demonstrate eligibility for a portion of the consent order fund. After these meritorious claims are paid, a second stage may become necessary if funds remain.

Comments were solicited regarding the proposed refund procedures outlined in the PD&O. Seven interested parties, including four states, filed comments in response to the PD&O.[5] These comments are discussed in the following presentation of the procedures we are adopting. In addition, each of the four states commented on the distribution of residual funds in a second-stage

[1] ERC marketed all of its petroleum products under the name Delta Refining Company. On November 13, 1980, MAPCO, Inc. (MAPCO) acquired more than 50 percent of ERC's outstanding capital stock, and ERC was merged fully into MAPCO soon thereafter. However, the consent order with ERC only pertains to sales by ERC as an independent entity.

[2] A portion of the $5,000,000 price reduction to retail gasoline purchasers was never implemented due to the deregulation of petroleum products on January 28, 1981. *See* Executive Order 12287, 46 FR 9909 (January 30, 1981). This portion—$896,498.51—was deposited into the DOE escrow account established for the ERC consent order.

[3] As of March 31, 1982, ERC had paid $356,521.89 in credit to DFSC. On April 1, 1982, ERC deposited the remaining $1,540,631.67 due DFSC (including interest accrued since the beginning of the credit payment period) into the DOE escrow account. As discussed *infra*, we have determined that DFSC, as an ultimate consumer of ERC products, is entitled to this sum plus accrued interest.

[4] As of December 31, 1985, the ERC consent order escrow account contained $10,938,130.18 in principal and $5,113,475.75 in accumulated interest, for a total of $16,051,605.93 (hereinafter referred to as the consent order fund).

[5] The seven commenters were: Marathon Petroleum Company, the National Council of Farmer Cooperatives, the Earth Resources/Delta Marketers and Jobbers' Group, the States of California, Florida, and Texas, and the Commonwealth of Pennsylvania.

proceeding. The formulation of procedures for the final disposition of any funds remaining after meritorious claims have been paid will necessarily depend on the size of the fund. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981). Accordingly, it would be premature for us to address at this time the issues raised by the states' comments concerning disposition of second-stage funds.

II. Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by the OHA in formulating and implementing plans to distribute funds received as a result of an enforcement proceeding. The Subpart V process may be used in situations where the DOE is unable to identify readily the persons who may be eligible to receive refunds as a result of enforcement proceedings or to ascertain readily the amounts that such persons should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

A. Crude Oil Claims

The ERC consent order resolves the firm's alleged violations of both the petroleum price and allocation regulations. As stated *supra*, with regard to the crude oil regulations, the consent order stipulated that ERC pay $626,000 to the DOE in settlement of allegations concerning ERC's compliance with the DOE Crude Oil Entitlements Program. This figure represents funds to be set aside to provide restitution for the effects of ERC's alleged Entitlements Program violations.

In the PD&O, we tentatively decided to pool the crude oil portion of the ERC consent order fund with other crude oil settlement monies to be used for indirect restitution. This proposal relied upon the DOE's recent Statement of Restitutionary Policy, which concludes that such funds should be set aside so as to permit Congress to formulate a means for distributing crude oil overcharge funds to the general public on an indirect basis. 50 FR 27400 (July 2, 1985). Most of the comments which we received in response to the PD&O addressed this proposal. The arguments submitted opposing adoption of the DOE policy in this proceeding generally include the following: (1) The policy is a procedurally invalid rulemaking; (2) the policy will not effect restitution to parties possibly injured by the alleged crude oil violations, since it contemplates depositing crude oil funds in the U.S. Treasury; (3) the policy does not allow potentially injured parties a reasonable opportunity to demonstrate their eligibility for restitution; and (4) the policy does not involve state governments as a channel for indirect restitution to the public. We have previously considered and rejected comments virtually identical to these. *Amber Refining, Inc.*, 13 DOE ¶ 85,217 at 88,567 (1985). As was stated in *Amber*, the DOE has broad discretion to fashion appropriate restitutionary remedies. *Citronelle-Mobile Gathering, Inc.* v. *Edwards*, 669 F.2d 717 (Temp. Emer. Ct. App.), *cert. denied*, 459 U.S. 877 (1982). Further, in a recent judgment, the Temporary Emergency Court of Appeals (TECA) held that a claims process need not be implemented in cases where the effects of crude oil overcharges cannot be traced. *United States* v. *Exxon Corp.*, 773 F.2d 1240, 1286 (Temp. Emer. Ct. App. 1985), *petition for cert. filed*, Nos. 85–429, 85–430, 85–432, 58–440, 85–444 (September 13, 1985). Therefore, these comments do not convince us that this policy should be changed.

In addition, the Earth resources/Delta Marketers' and Jobbers' Group filed comments attacking the OHA's report in the *Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan., filed June 21, 1985), upon which the DOE's crude oil policy relies. These comments maintain that the report has no basis in fact, since its conclusions about the traceability of crude oil overcharges and the efficacy of a claims process for the Stripper Well funds vary from positions on those issues expressed in an earlier draft report. The commenters further contend that the changes in the final report were made after the OHA consulted DOE officials about the draft report, which the commenters claim was an improper action by the OHA, given its fact-finding role in the *Stripper Well* proceeding.

The commenters' attempt to discredit the OHA *Stripper Well* report as a factual basis for the DOE's disposition of the ERC crude oil settlement funds has no basis. The extensive factual evidence accumulated during the *Stripper Well* hearings confirms the conclusions we reached in that proceeding. Instead of presenting alternative factual evidence to contradict the OHA's *Stripper Well* findings, the commenters attempt to dispute its conclusions by drawing attention to a draft report. This attempt must also fail. By its very nature that report was preliminary and subject to modification. In any event, actions which this Office may have taken to comply with the court's mandate in the *Stripper Well* proceeding are completely irrelevant to the issue at hand, namely, whether we can efficiently and accurately identify parties injured by ERC's alleged crude oil violations. Since the commenters have presented no evidence whatsoever which addresses the latter issue, we have no reason to question the factual conclusion in the *Stripper Well* report. We therefore have determined that the commenters have not shown that the *Stripper Well* report was in any way flawed, and the portion of the ERC consent order fund pertaining to alleged crude oil violations will be pooled with other, similar funds in accordance with the OHA's Order Implementing Departmental Policy Regarding Crude Oil Overcharges. 50 FR 27402 (July 2, 1985).

B. Refined Products Claims

The remaining $10,312,130.18 plus interest in the consent order fund relates to ERC's alleged violations of refined products pricing and allocation regulations. During the first stage of the refund process, the consent order funds will be distributed to claimants that satisfactorily demonstrate that they were adversely affected by ERC's alleged overcharges in sales of covered products. We will accept applications from all parties who can demonstrate that they either directly or indirectly purchased products which originated with ERC.

In order to be eligible to receive a refund, claimants must file an application and, with the three exceptions discussed below, show the extent to which they were injured by the alleged overcharges. While there are a variety of ways in which a showing of injury may be made, we proposed in the PD&O that a reseller or retailer generally be required to demonstrate that competitive market conditions would not permit it to pass through the increased costs associated with the alleged overcharges.

The Earth Resources/Delta Marketers' and Jobbers' Group filed comments suggesting another possible method for demonstrating injury. This method, used in one previous case, *Vickers Energy Corp./Denny Klepper Oil Co.*, 13 DOE ¶ 85,051 (1985) (*Klepper*), entails establishing a "profit margin threshold" equal to 90% of the applicant's average profit margin during the consent order period. Under the suggested methodology an applicant would be found to have experienced injury as a result of the alleged overcharges in months where its profit margin did not reach the "threshold" amount. Refunds would be available only for purchases in those months.

Since the time we used the suggested *Klepper* methodology in the Vickers proceeding—the only time it has been employed—we have come to the view that this methodology is impractical. It can lead to an inexact and distorted result by producing the appearance of injury in some cases where none occurred while withholding relief in other instances where it would otherwise be warranted. This results because in establishing a standard for injury based only on profit margin data for the applicant firm, the *Klepper* methodology ignores other relevant factors which are equally or even more important to the showing of injury yet affect profit margins in a misleading way. One example is a firm that elected to reduce prices and thus its profit margin on sales but increase its total profits through higher sales volume. Under *Klepper* this firm would have demonstrated "injury" in the *Klepper* sense even though its total profitability increased. Another firm might have elected to pass on all increased costs and thereby maintain its profit margin on sales but experience operating losses when sales volume declined. This firm would not have been "injured" under the *Klepper* test. Likewise, fluctuations in the petroleum market as a whole can influence the profit statistics of a single firm. The price and supply disruptions of 1979 and 1980, not a factor in the Vickers refund proceeding because the relevant consent order covered an earlier period, had a significant effect on many small firms' profit margins. *See Mobil Oil Corporation*, 13 DOE ¶ _____, No. HEF-0508 (December 24, 1985); *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,208 (1982) (*Amoco*).

In contrast to the narrow scope of analysis embodied in the *Klepper* methodology, previous OHA refund determinations have relied upon different methods which more accurately reflect the absorption of alleged refined product overcharges at different levels of complex chains of distribution. In some cases, we have analyzed profit margin data aggregated from a category of similarly situated firms, *e.g.*, jobbers purchasing from a particular refiner, to construct presumptions of injury. *See, e.g., Mobil Oil Corporation*, 13 DOE ¶ _____, No. HEF-0508 (December 24, 1985); *Getty Oil Company*, 13 DOE ¶ 90,068 (1985) (Proposed Decision); *Amoco*. Another useful method used in previous cases involves using market comparisons to gauge the competitive disadvantage a claimant suffered in purchasing a consent order firm's products. For example, firms have presented schedules of the product prices paid to the consent order firm and compared them to prevailing market prices. We have found that firms that paid prices demonstrably above the market average were injured in those transactions. *See, e.g., Allied Materials Corporation and Excel Corporation/Great Plains Corporation*, 13 DOE ¶ 85,289 at 88,732 (1985).

The *Klepper* methodology also can lead to inconsistent treatment of similar refund applicants. For example, even if two claimant firms are equally profitable (or unprofitable) on average, a firm with a large variance in its month-to-month profitability might receive refunds for close to half of the months in the consent order period, while a firm with a consistent level of profitability might never fall below the 90% threshold in any particular month, and therefore would not be eligible for any amount of refund. Finally, the *Klepper* case itself proved to be a poor model for designing other refund procedings, since the refund amount was computed by the OHA under specific remand instructions designed by the District Court for the District of Columbia. *Denny Klepper Oil Co.* v. *DOE*, Civil Action No. 84-0547, 3 Fed. Energy Guidelines ¶ 26,513 (D.D.C. 1984). For all of these reasons, we have decided that we will not rely upon the *Klepper* methodology alone as proof of injury in this proceeding. Firms may submit profit data as part of an attempt to demonstrate injury, but this material may not be sufficient evidence without the presence of other factors, such as sales volume decreases or competitive disadvantage.

In addition to a showing of injury, a reseller or retailer claimant must show that during the consent order period, it maintained a "bank" of unrecovered increased product costs at least equal to the refund amount claimed, indicating that the claimant did not actually pass on alleged overcharges to its own customers. If actual, contemporaneously calculated cost banks are not available for specific reasons, we will accept other information, *e.g.*, monthly profit margin data, which conclusively proves that the alleged overcharges were not passed along. *See Husky Oil Company*, 13 DOE ¶ 85,045 (1985); *see also Tenneco Oil Company/Northern Petroleum, Inc.*, 13 DOE ¶ 85,207 (1985).

In this case we are adopting three rebuttable presumptions regarding the demonstration of injury. These presumptions have been used in many previous refund proceedings. First, we will presume that purchasers of ERC products who are claiming small refunds ($5,000 or less, not including interest) were injured by the alleged overcharges. Claimants in this category need not provide us with a showing of injury, as described above.[6] Second, we will not require a showing of injury from regulated utilities or agricultural cooperatives that passed on the alleged overcharges in sales of refined products to their end-user members. In their applications, however, these firms should provide a full explanation of the manner in which refunds would be passed through to customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of a refund. Third, we will adopt a presumption that spot purchasers were not injured and are generally not eligible to apply for refunds.[7] Prior OHA decisions provide detailed explanations of the basis for these presumptions. *E.g., VGS Corporation, et al.*, 13 DOE ¶ 85,165 at 88,451-53 (1985). We also explained the rationale for these presumptions in the PD&O. 50 FR 43449 at 43451-52. (October 25, 1985). The presumptions will permit claimants to apply for refunds without incurring disproportionate expenses and will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Finally, we will adopt a finding made in the PD&O that end-users or ultimate consumers of ERC products whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges, and therefore need not demonstrate injury. *Id.*

C. Calculation of Refund Amounts

We will adopt a volumetric method of dividing the consent order funds among applicants who demonstrate eligibility to receive refunds.[8] This method,

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[6] Resellers or retailers of ERC products who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the alleged overcharges will be eligible for a refund up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000 in order to avoid having to submit detailed documentation of their injury. *See* Office of Enforcement, 8 DOE ¶ 82,597 at 85,396 (1981).

[7] If a spot purchaser believes it was injured, it must submit additional documentation of this injury to overcome the presumption that this category of ERC customers suffered no harm. As in previous cases, however, we will except from the presumption of non-injury cooperative organizations which made spot purchases and resold these products to their members. *See* VGS Corporation, *et al.*, 13 DOE ¶ 85,165 at 88,453 n.8 (1985).

[8] In the PD&O, we proposed that one eligible refund claimant in this proceeding, DFSC, would be eligible to receive the full amount of unpaid credit memoranda deposited in the DOE escrow account.

Continued

outlined in the PD&O, presumes that the alleged overcharges were spread equally over all the gallons of products which ERC sold during the consent order period. We have calculated the volumetric amount to be used in this proceeding by dividing the total amount of consent order funds pertaining to refined products sales—$8,638,130 exclusive of interest ($8,638,130 = $10,312,130 total refined products fund less $1,674,000 set aside for DFSC claim)—by the total volume of regulated petroleum products sales by ERC during the consent order period, which we estimate to be approximately 2,872,372,682 gallons, this calculation results in a volumetric refund amount of $.003007 per gallon. A successful claimant will receive a refund equal to its eligible volume of petroleum product purchases from ERC multiplied by the volumetric amount, plus a pro rata share of accrued interest.[9]

III. Applications for Refund

We have determined that the refund procedures described above are the best means of distributing the ERC consent order fund. Accordingly, we will now accept applications for refunds.

Applications must be in writing, signed by the applicant, and make reference to Case Number HEF-0205. Applications must include the following information:

(i) The business address of the firm during the consent order period, August 19, 1973 through January 28, 1981;

(ii) Monthly schedules indicating the volume of products purchased from ERC during the consent order period, or, if no documentation is available, a detailed estimate of purchases;

(iii) A showing of injury, as explained above, or a statement that the applicant need not show injury because it was an end-user of the product, an agricultural cooperative or regulated utility which sold the product to members, or is claiming a refund of $5,000 or less;

(iv) An indication of the firm's level in ERC's chain of distribution, *e.g.*, ultimate consumer, reseller, etc.

(v) A statement of whether the applicant is or has been involved as a party in DOE enforcement actions or private, § 210 actions. If these actions have been concluded, the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status.

(vi) A statement of whether there has been a change in the ownership of the firm during the consent order period. If there has been a change of ownership, the applicant must provide the names and addresses of any other owners and either a statement of the reasons why the refund should be paid to the applicant rather than to the other owners, or a signed statement from the other owners indicating that they do not claim a refund.

(vii) The name, title, and telephone number of a person who the OHA may contact for additional information concerning the application; and

(viii) The following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c), 18 U.S.C. 1001.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue SW., Washington, DC. Any applicant who believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the information which the application claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential. All applications should be sent to: Earth Resources/Delta Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

It is therefore ordered that:

(1) Applications for Refunds from the funds remitted to the Department of Energy by Earth Resources Company pursuant to the Consent Order executed on January 27, 1981 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Date: January 23, 1986

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-2323 Filed 1-31-86; 8:45 am]

BILLING CODE 6450-01-M

See text at note 3, *supra*. We received no comments objecting to this proposal and will allow DFSC to apply for the unpaid credit amount—$1,540,631.67 plus accumulated interest—instead of a refund computed by the volumetric method.

[9] Any applicant that believes it suffered a disproportionate share of ERC's alleged overcharges may apply for a refund greater than the amount computed by the volumetric method. Such applicants will be required to document conclusively the disproportionate impact. In addition, we intend to set a minimum refund amount for potential claimants. In prior refund cases, we have not granted refunds for less than $15.00 because the cost of issuing such refunds exceeds the restitutionary benefits which may be achieved. *See* Office of Special Counsel, 10 DOE ¶ 85,048 at 88,214 (1982). We will utilize the same minimum refund in the present case.

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/28H; FRL-2952-6]

Creosote, Pentachlorophenol, and Inorganic Arsenicals; Amendment of Notice of Intent To Cancel Registrations

Correction

In FR Doc. 86-575 beginning on page 1334, in the issue of Friday, January 10, 1986, make the following corrections:

1. On page 1344, second column, in the eighth complete paragraph, insert a period after the word "contamination" and a new sentence should begin with the word "Dispose".

2. On page 1346, second column, in paragraph 2, at the end of the seventh line, the word "and" should be inserted.

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

KOZN-FM Stereo 99, Ltd; Hearing; Order To Show Cause and Notice of Apparent Liability

In the matter of KOZN FM Stereo 99, Ltd., MM Docket No. 85-397; Lincensee of Radio Station, KOZN-FM, Imperial, CA; Order to Show Cause Why the license of KOZN-FM, Imperial, CA should not be revoked.

Adopted: December 24, 1985.

Released: January 2, 1986.

By the Commission.

1. The Commission has before it for consideration: (a) the license of KOZN-FM Stereo 99, Ltd. for radio station KOZN-FM, Imperial, CA; and (b) the result of its investigation into the alleged unauthorized operation of KOZN-FM by an alien licensee and the alleged misrepresentation by Richard Edgar Green that he was an American citizen when, in fact, he was a Canadian citizen.

2. Following receipt of a complaint, the Commission commenced on June 14, 1985, an inquiry that revealed the following facts. Richard Edgar Green was born in Toronto, Canada, on March 29, 1940. He entered the United States with his parents on May 6, 1947, at Niagara Falls, NY, and later enlisted in the United States Navy. He served from 1958-62 and was honorably discharged. Green's draft registration falsely

indicated that he was born on March 29, 1937, in Einberg, Pennsylvania. This was the same date and place of birth that Green submitted to the Commission in his application for KOZN–FM's construction permit (BPH–790508AB). In addition, Green has admitted that he misrepresented his citizenship to the Commission in subsequent documents including ownership forms, the renewal application for KOZN–FM (Form 303–S, File No. BRH–830801VM), and the application for assignment of license from Richard E. Green to KOZN–FM Stereo 99, Ltd. (BALH–840416HE).[1] The licensee has also conceded that "no facts can justify such misrepresentation made to the Commission . . . ." [2]

3. Section 312(a)(1) of the Communications Act of 1934, as amended, states that "[t]he Commission may revoke any station license or construction permit . . . for false statements knowingly made . . . in the application." section 312(a)(2) permits the Commission to revoke a station license "because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application; . . ."

4. In the instant case, the licensee has admitted that he intentionally misrepresented in KOZN–FM's construction permit application that he was a United States citizen when, in fact, he was a citizen of Canada. Such alien ownership is specifically forbidden under section 310(b)(1) of the Communications Act, which states that "[n]o broadcast or . . . radio station license shall be granted to or held by . . . any alien or the representative of any alien. . . ." Consequently, the Commission would not have granted the application of Mr. Green for KOZN–FM had his alien status been revealed.

5. The Commission must necessarily depend on the integrity and representations of its licensees. A breach of that trust or willful false statements may constitute sufficient grounds for the revocation of licenses and character disqualification. *See FCC* v. *WOKO, Inc.*, 329 U.S. 223 (1946); *Charles P. B. Pinson, Inc.* v. *FCC*, 321 F.2d 372 (D.C. Cir. 1963); *see also Pass Word, Inc.*, 76 FCC 2d 465 (1980) (revocation was based upon, and could be based solely upon, the pattern of deliberate misrepresentation and the resulting lack of character qualification of the licensees). In addition, Mr. Green did not take steps to change his status from alien to citizen in order to comply with his representations to this Commission until after he was alerted by the Commission's inquiry that his misrepresentations were under investigation.

6. The licensee has presented several factors that it believes would mitigate our consideration of a revocation of the license of KOZN–FM. We do not find them persuasive. Although it is true that some innocent employees might lose their jobs if a revocation order were issued, "we may not permit the impact upon employees to stand in the way of revocation when the public interest requires such action . . . ." *KWK Radio, Inc.*, 35 FCC 561, 563 (1963). In addition, the loss of local radio service to Imperial, CA, would not consitute a mitigating factor. *Id.* The licensee has also contended that mitigation would be justified because of his unblemished record "[w]ith the exception of a single notice of violation issued on July 10, 1981, for engineering discrepancies, which were corrected without further Commission action. . . ." The Commission has previously addressed and rejected an analagous contention in *Williamsburg County Broadcasting, Inc.*, 30 FCC 2d 173, 175 (1971).

7. Accordingly, it is ordered, that, pursuant to sections 312 (a)(1) and (a)(2) of the Communications Act of 1934, as amended, Richard Edgar Green is directed to show cause why the license for Radio Station KOZN–FM should not be revoked, upon the following issues:

(1) Whether, in light of all the facts and circumstances pertaining thereto, Richard Edgar Green obtained and/or held the license for Radio Station KOZN–FM in violation of section 310(b)(1) of the Communications Act of 1934, as amended.

(2) Whether Richard Edgar Green misrepresented to the Commission that he was an American citizen for the purpose of obtaining the construction permit for KOZN–FM.

(3) Whether, in light of the evidence adduced under issues (1) and (2) above, Richard Edgar Green and KOZN–FM Stereo 99, Ltd., possess the requisite qualifications to be or to remain a licensee of the Commission.

8. It is further ordered, that the Chief, Mass Media Bureau, is directed to serve upon the licensee and Richard Edgar Green, within thirty (30) days of the release of this Order, a Bill of Particulars with respect to Issues (1) and (2) above.

9. it is further ordered, that pursuant to sectioin 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding with the evidence and the burden of proof shall be upon the Mass Media Bureau as to issues (1) through (3) inclusive.

10. It is further ordered, that to avail itself of the opportunity to be heard, the licensee, pursuant to section 1.91(c) of the Commission's Rules, in person or by attorney, shall file with the Commission within thirty days of the receipt of the Order to Show Cause a written appearance stating that he will appear at the hearing and present evidence on the matters specified in the Order. If the licensee fails to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. *See* section 1.92(a) of the Commission's Rules. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty (30) days of the receipt of the Order to Show Cause. *See* section 1.92(b) of the Commission's Rules. In the event the right to a hearing is waived, the presiding officer or the Chief Administrative Law Judge, if no presiding officer has been designated, will terminate the hearing proceeding and certify the case to the Commission in the regular couse of business and an appropriate Order will be entered. *See* section 1.92 (c) and (d) of the Commission's Rules.

11. It is further ordered, that if it is determined that the hearing record does not warrant an Order revoking the license of KOZN FM Stereo 99, Ltd. for Radion Station KOZN–FM, it shall also be determined if Richard Edgar Green has willfully or repeatedly violated section 310(b)(1) of the Communications Act of 1934, as amended (alien ownership prohibition). If so, it shall also be determined whether an Order for Forfeiture shall be issued pursuant to section 503(b) of the Communications Act of 1934, as amended, in the amount of $20,000 for the willful or repeated violation of section 310(b)(1) of the Communications Act of 1934, as amended.

12. It is further ordered, that this document constitutes a Notice of Apparent Liability for forfeiture for

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[1] Although the licensee has never filed with the Commission the required notification that the assignment application was consummated, KOZN–FM's ownership report, dated March 26, 1984, indicates that the licensee is currently operating as the above-captioned partnership. This information was also conveyed to the Commission earlier in an ownership amendment dated November 9, 1983, which contained the notarized contractual agreement between the proposed partners, Richard E. Green and Toni B. Blackman.

[2] The licensee stated that on July 2, 1985, subsequent to the Commission's inquiry, he applied for United States citizenship which was granted on August 14, 1985. Green explained that he had neglected to implement the legal procedures to become a naturalized citizen following his Navy discharge because he already had permanent resident status, had served on active duty in the military, and had satisfied the language and history requirements for citizenship.

violation of section 310(b)(1) of the Communications Act of 1934, as amended. The Commission has determined that, in every case designated for hearing involving revocation or denial of assignment, transfer, or renewal of license for alleged violations which also come within the purview of section 503(b) of the Communications Act of 1934, as amended, it shall, as a matter of course, include this forfeiture notice so as to maintain the fullest possible flexibility of action. Since the procedure is thus a routine of standard one, we stress that the inclusion of this notice is not be be taken as in any way indicating what the initial or final disposition of the case should be; that judgment is, of course, to be made on the facts of each case.

13. It is further ordered, that the Chief, Mass Media Bureau, send a copy of this Order by *Certified Mail, Return Receipt Requested,* to: KOZN FM Stereo 99, Ltd., Licensee of Radio Station KOZN–FM, P.O. Box 967, Imperial, CA 92251.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–2284 Filed 1–31–86; 8:45 am]

BILLING CODE 6712–01–M

Allocations and Technical Subgroups of Radio Advisory Committee; Joint Meeting

March 7, 1986.

The Allocations and Technical Subgroups of the Advisory Committee on Radio Broadcasting resume their continuing meetings in a joint session to be held on Friday March 7, 1986, at 10:00 a.m. in the Wasilewski Room of the National Association of Broadcasters, 1771 N Street NW., Washington, DC.

The Subgroups will give consideration to the final preparations for the upcoming Region 2 Conference on expansion of the AM band. The First Session of which is scheduled to begin on April 14, 1986. In particular, the Subgroups will focus on the planning method to be used in developing the spectrum to become available through expansion of the AM band, including the related issue of maximum power to be permitted. In these regards, attention will be given to the results of bilateral and Regional meetings which have taken place as part of the preparations for the Conference.

In addition, as appropriate, the Subgroups will continue their examination of possible steps which could be taken to improve the effective use of the AM band. This includes consideration of policy and technical changes to enhance the ability of AM stations to compete effectively in the radio marketplace.

The Subgroup meetings are continuing ones and may be resumed after the March 7, 1986, session at such time and place as may be decided at that session.

All meetings of the Allocations and Technical Subgroups are open to the public. All interested parties are invited to attend and participate in these meetings.

For further information, please call either the Chairman of the Allocations Subgroup, Jonathan David, at (202) 632–7792 or the Chairman of the Technical Subgroup, Wallace Johnson, at (703) 341–0500.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–2283 Filed 1–31–86; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–004166–001.

Title: The Port of Oakland and Pasha Properties, Inc. Terminal Management Agreement.

Parties:

The port of Oakland (Port)
Pasha Properties, Inc. (Pasha).

Synopsis: The proposed amendment would extend until March 15, 1986, the time in which the parties may reach agreement as to the adjusted compensation to be paid by Pasha to the Port beginning February 1, 1986.

Agreement No.: 202–008900–031.

Title: Eighty-nine Hundred Rate Agreement.

Parties:

Barber Blue Sea
A.P. Moller-Maersk Line
Nedlloyd Lijnen, B.V.
Sea-Land Service, Inc.
The National Shipping Co. of Saudi Arabia
United Arab Shipping Co. (S.A.G.)
Waterman Steamship Corporation.

Synopsis: The proposed amendment would enlarge the geographic scope of the agreement to include Saudi Arabia ports on the Red Sea.

Agreement No.: 002–010881.

Title: Lake Michigan and Lake Superior Ports Terminal Agreement.

Parties:

Port of Green Bay, Wisconsin
Port of Milwaukee, Wisconsin
Port of Kenosha, Wisconsin
Port of Chicago, Illinois
Port of Burns Harbor, Illinois
Port of Superior, Wisconsin
Port of Duluth, Minnesota.

Synopsis: The proposed agreement would establish a conference agreement between the parties for the purpose of improving the general cargo situation at U.S. ports on Lakes Michigan and Superior. The parties would have authority to discuss, agree upon, establish and enforce terminal rates, charges and practices. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: January 29, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86–2243 Filed 1–31–86; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

January 28, 1986.

Background

Notice is hereby given of final approval of an information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Martha Bethea—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–3822)

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office

Building, Room 3208, Washington, D.C. 20503 (202–395–6880).

The Board has reinstated the reporting form entitled "Mortgage Loan Disclosure Statement" (FR HMDA–1; OMB No. 7100–0220), the form used to collect data under the Home Mortgage Disclosure Act, 12 U.S.C. 2801–2811 (HMDA), as implemented by the Board's Regulation C, 12 CFR 203. Because HMDA was scheduled to expire on October 1, 1985, *see* 12 U.S.C. 2811, the Board had obtained approval for the HMDA–1 form from OMB only throuh September 30, 1985. Congress, however, has temporarily extended HMDA through March 17, 1986. *See* Pub. L. 99–219 (Dec. 26, 1985).

OMB's delegation of authority to the Board provides that the Board may approve a collection of information immediately, without the usual period for public comment, if the usual process would "substantially interfere with the Board's ability to perform its statutory obligation . . . ." 5 CFR part 1320 Appendix A ¶ 1(a)(3)(i)(A).

If the Board is to meet its responsibilities under HMDA, it must act without delay to inform affected institutions. Accordingly, the Board has approved the immediate reinstatement of the HMDA–1 form through April 15, 1986.

Board of Governors of the Federal Reserve System, January 28, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–2229 Filed 1–31–86; 8:45 am]

BILLING CODE 6210–01–M

Central Financial Corp. et al. Formations of; Acquisitions by; and Mergers of Bank Holding Co.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 21, 1986.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Central Financial Corporation,* Randolph, Vermont; to become a bank holding company by acquiring 100 percent of the voting shares of The Randolph National Bank, Randolph, Vermont.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Community Bancshares, Inc.,* Blountsville, Alabama (formerly Blountsville Bancshares); to acquire 100 percent of the voting shares of Community Bank of Marshall County, Arab, Alabama. Comments on this application must be received not later than February 24, 1986.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Success Financial Group/Indiana, Inc.,* Wilmington, Delaware; to become a bank holding company by acquiring 82.6 percent of the voting shares of Industrial National Bank of East Chicago, East Chicago, Indiana. Comments on this application must be received not later than February 10, 1986.

D. **Federal Reserve Bank of St. Louis,** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Central State Bancorp, Inc.,* Lexington, Tennessee; to become a bank holding company by acquiring 80 percent of the voting shares of Central State Bank, Lexington, Tennessee.

2. *First Kentucky National Corporation,* Louisville, Kentucky; to acquire 100 percent of the voting shares of Central Bancorp, Inc., Owensboro, Kentucky, thereby indirectly acquiring Central Bank and Trust Company, Owensboro, Kentucky. Comments on this application must be received not later than February 24, 1986.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Palco Bancshares, Inc.,* Palco, Kansas; to become a bank holding company by acquiring 80.05 percent of the voting shares of The First National Bank of Palco, Palco, Kansas. Comments on this application must be received not later than February 24, 1986.

F. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Gateway Bancorp, Inc.,* Phoenix, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of Gateway National Bank (in organization), Phoenix, Arizona.

2. *Puget Sound Bancorp,* Tocoma, Washington; to acquire 100 percent of the voting shares of The Bank of Seattle, Seattle, Washington.

Board of Governors of the Federal Reserve System, January 28, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–2230 Filed 1–31–86; 8:45 am]

BILLING CODE 6210–01–M

Dixie Bancshares Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the

evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 21, 1986.

A. **Federal Reserve Bank of St. Louis** (Delmar P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Dixie Bancshares Corp.*, New Madrid, Missouri ("Applicant"); to engage *de novo* directly in the servicing of existing loans outstanding to Applicant's insiders, and the making and servicing of future loans to insiders of Applicant, pursuant to § 225.25(b)(1) of Regulation Y.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Interstate Bancorp*, Los Angeles, California; to engage *de novo* through its subsidiary First Interstate Trust Company of New York, New York, New York, in indirectly providing trust services usual to banks and bank affiliated trust companies, pursuant to § 225.25(b)(3) (i) and (ii) of Regulation Y.

2. *Wells Fargo & Company*, San Francisco, California; to engage *de novo* through its subsidiary, Central Western Insurance Company, Phoenix, Arizona, in underwriting credit life and credit disability insurance, pursuant to § 225.25(b)(9) of Regulation Y.

Board of Governors of the Federal Reserve System, January 28, 1986.

James McAFee,

Associate Secretary of the Board.

[FR Doc. 86-2231 Filed 1-31-86; 8:45 am]

BILLING CODE 6210-01-M

Hongkong and Shanghai Banking Corp., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)), to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspecton at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a heairng on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applicatons must be received at the Reserve Bank indicated for the applicatoin or the offices of the Board of Governors not later than March 1, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

The Hongkong and Shanghai Banking Corporation, Hong Kong, B.C.C.; *Kellett N.V.*, Curacao, Netherlands Antilles; *HSBC Holdings B.V.*, Amsterdam, The Netherlands; and *Marine Midland Banks, Inc.*, Buffalo, New York: for Marine Midlands Banks, Inc., either directly or indirectly through a newly-formed, wholly-owned subsidiary, to require from its wholly-owned subsidiary, Marine Midland Bank, N.A., Buffalo, New York, all of the shares of CM&M Group, Inc., New York, New York ("Group"), and thereafter to engage through the subsidiaries of Group, in various securities and leasing activities.

The activities that wil be performed are as follows:

(1) Carroll McEntee and McGinley, Inc., New York, New York ("CM&M"): to act as a primary dealer in U.S. government and Federal agency securities, CM&M also proposes to purchase and sell for its own account financial futures and options on the securities. CM&M also acts as a dealer in money market instruments, bankers' acceptances, and negotiable certificates of deposits. The activities will be conducted from offices in New York City, Atlanta, Boston, Chicago, Clevelend, Houston, Los Angeles, Philadelphia, and San Francisco.

(2) Marine-CM&M Securities, Inc., New York, New York: to engage in discount brokerage activities. This activity will be conducted from offices in New York, New York and Palm Beach, Florida.

(3) Intramarket Securities Corporation, New York, New York: to act as an dealer in fixed income securities, certificates of desposits, bankers' acceptances and gold and silver bullion.

(4) CM&M Futures, New York, New York: to engage as a broker in financial futures instruments and foreign currency options. This activity will be conducted from offices in New York, New York, and Chicago, Illinois.

(5) Investors Arbitrage Corporation, New York, New York: to act as an investment advisor. This activity would be conducted from offices in New York, New York, and Tucson, Arizona.

(6) American Interest Arbitrage Corporation, New York, New York: to act as an investment advisor and money manager for Group.

(7) Reacvom Services, Inc., New York, New York: to engage in equipment leasing for Group.

Board of Governors of the Federal Reserve System, January 28, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-2232 Filed 1-31-86; 8:45 am]

BILLING CODE 6210-01-M

Puget Sound Bancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless

otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 21, 1986.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Puget Sound Bancorp*, Tacoma, Washington; to acquire 100 percent of the voting shares of The Bank of Redmond, Redmond, Washington.

Applicant has also applied to acquire Redmond Mortgage Company, Redmond, Washington, and thereby engage in mortgage lending activities, pursuant to § 225.25(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, January 28, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-2233 Filed 1-31-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; National Cholesterol Education Program Coordinating Committee; Meeting

Notice is hereby given of the meeting of the National Cholesterol Education Program Coordinating Committee sponsored by the National Heart, Lung, and Blood Institute, on March 7, 1986, 9 a.m. to 4 p.m., Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814, (301) 897-9400.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National Cholesterol Education Program. Attendance by the public will be limited to space available.

For the detailed program information, agenda, list of participants and meeting summary contact: Dr. James I. Cleeman, Coordinator, National Cholesterol Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A18, Bethesda, Maryland 20892, (301) 496-1051.

Those who wish to attend the meeting, please contact Sharman DeWeese, University Research Corporation, Suite 430 North, 1776 East Jefferson Street, Rockville, Maryland 20852, (301) 230-1340.

Dated: January 28, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-2244 Filed 1-31-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Availability of BLM Utah Statewide Wilderness Draft Environmental Impact Statement, Volumes I, II, III, IV, V, and VI

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the draft wilderness environmental impact statement (EIS) and schedule of public hearings.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management, Department of the Interior, has prepared a draft environmental impact statement analyzing possible impacts from Congressional wilderness designation of BLM wilderness study areas (WSAs) in Utah. There are 82 WSAs including 3,231,327 acres under consideration. The draft EIS is comprised of six volumes.

Volume I is a Statewide overview. Eleven Statewide alternatives (combinations of WSAs) are identified, with seven of these analyzed in detail. The alternative analyzed in detail are as follow:

1. BLM Proposed Action
   —Designates 1,892,402 acres.
   —Includes all areas and acres currently judged by BLM to meet the test of wilderness suitability.
2. No Action/No Wilderness Alternative
   —Designates 0 acres.
   —Alternative required by regulations.
   —Provides lower limit of designated acreage to range of alternatives.
3. All Wilderness Alternative
   —Designates 3,231,327 acres.
   —Provides upper limit of WSA acreage to range of alternatives.
4. Manageability Alternative
   —Designates 2,606,546 acres.
   —Includes areas without significant wilderness management problems.
5. Paramount Wilderness Alternative
   —Designates 1,474,380 acres.
   —Includes highest quality areas having minimum conflicts with other resources, to the extent possible; also includes key areas where wilderness values clearly exceed other resource values, if unavoidable, if unavoidable conflicts exist.
6. Regional Representative Areas Alternative
   —Designates 913,225 acres.
   —Includes a selection of one or more WSAs that are most representative of each of five geographic regions in the State.
7. Small Cluster Concept Alternative
   —Designates 851,271 acres.
   —Includes areas selected from the BLM Proposed Action.
   —Considers geographic distribution and includes adjacent WSAs separated by dirt or gravel roads, minor intrusions, and less than a half mile distance.
   —Identifies clusters that total 100,000 acres or more, including adjacent non-BLM wilderness lands or proposals.
   —Provides at least 25 percent of BLM WSA lands in a cluster.

Volumes II through VI contain individual WSA analysis by Utah region as follows:

Volume II concerns WSAs in the West-Central Region (West Desert Area); Volume III concerns WSAs in the South-West Region (Zion vicinity and Kaiparowits Plateau); Volume IV concerns WSAs in the South-Central Region (Henry Mountains and Dirty Devil River Area); Volume V concerns WSAs in the South-East Region (Canyonlands Area), and Volume VI concerns WSAs in the East-Central

Region (San Rafael Swell and Book Cliffs).

The scoping process for this Draft EIS identified the following twelve major issues:

1. Impacts on naturalness.
2. Impacts on opportunities for solitude.
3. Impacts on opportunities for primitive and unconfined recreation.
4. Impacts on wilderness special features.
5. Impacts on mineral and energy production.
6. Impacts on livestock grazing levels.
7. Impacts of future rangeland improvements for livestock.
8. Impacts on ranching practices.
9. Impacts on land use plans and controls.
10. Impacts on employment.
11. Impacts on income.
12. Impacts on government revenues.

The analysis is based on projected conditions with and without wilderness designation. It does not include the effects of the Interim Management Policy.

Locations Where Copies Are Available

Limited copies of the Draft EIS are now available at the locations described below. Specify the Volumes that are desired.

Bureau of Land Management, Utah State Office, Public Room, 324 South State, Salt Lake City, Utah 84111–2303, Phone: (801) 524–5331 or 588–5331 FTS

Cedar City District Office, 1579 North Main, P.O. Box 724, Cedar City, Utah 84720, Phone: (801) 586–2401

Moab District Office, 82 East Dogwood, P.O. Box 970, Moab, Utah 84532, Phone: (801) 259–6111

Richfield District Office, 150 East 900 North, P.O. Box 768, Richfield, Utah, 85701, Phone: (801) 896–8221 or 584–8011 FTS

Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119, Phone: (801) 524–5348 or 588–5348 FTS

Vernal District Office, 170 South 500 East, Vernal, Utah 84078, Phone: (801) 789–1362

Public Comment Period Hearing Schedule

The public comment period on the Draft EIS will end June 15, 1986. Written comments should be sent to: Wilderness Studies (U–933), Bureau of Land Management, Utah State Office, 324 South State Street, Suite 301, Salt Lake City, Utah 84111–2303.

The schedule for sixteen public hearings to receive oral comments is as follows:

Date	Time (p.m)	Location	Address
May 07, 1986	7:00	Vernal	BLM Vernal District Office, Conference Room, 170 South 500 East, Vernal, UT.
Do	7:00	Provo	Utah County Building, Courtroom 310, 51 South University Avenue, Provo, UT.
Do	7:00	Escalante	Escalante High School, Lunchroom, 70 North First West, Escalante, UT.
Do	7:00	Monticello	Monticello High School, Auditorium, 164 South 200 West, Monticello, UT.
May 08, 1986	7:00	Tooele	Commissioners Chambers, (3rd Floor), Tooele County Courthouse, 47 South Main, Tooele, UT.
Do	7:00	Kanab	Kane County Courthouse, 70 North Main, Kanab, UT.
Do	7:00	Moab	Grand County Community Center, (Old Legion Building), 500 East 100 North, Moab, UT.
May 13, 1986	7:00	Ogden	Roland Perry Choral Room, Browning Performing Arts Center, Weber State College, 3750 Harrison Blvd., Ogden, UT.
Do	7:00	Cedar City	BLM Cedar City District Office, 1579 North Main, Cedar City, UT.
Do	7:00	Loa	Community Center, One Block West of Courthouse, Loa, UT.
Do	7:00	Price	Carbon County Courthouse, 200 East Main, Price, UT.
May 14, 1986	7:00	Logan	Mountain Fuel Supply, Auditorium, 45 East 200 North, Logan, UT.
Do	7:00	St. George	Washington County, Administration Building, 197 East Tabernacle, St. George, UT.
Do	7:00	Delta	Delta High School, Auditorium, 50 South 300 North, Delta, UT.
Do	7:00	Castle Dale	Emery County Courthouse, Castle Dale, UT.
May 15, 1986	2:00, 7:00	Salt Lake City	Suite E, Salt Palace, 100 South West Temple, Salt Lake City, UT.

FOR FURTHER INFORMATION CONTACT: Dr. Gregory F. Thayn, Wilderness EIS Team Leader, BLM Utah State Office, 324 South State, Suite 301, Salt Lake City, Utah 84111–2303, Telephone (801) 524–3135 or 588–3135 FTS.

Dated: January 28, 1986.

Roland G. Robison,

State Director.

[FR Doc. 86–2123 Filed 1–31–86; 8:45 am]

BILLING CODE 4320–DQ–M

Environmental Statement; Big Sandy Planning Unit; Sweetwater County, WV; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice, Big Sandy Planning Unit, notice of intent, Sweetwater County, Wyoming.

SUMMARY: The **Federal Register** Notice of July 18, 1984, (FR Vol. 49 No. 139, FR document W82637) on page 29157, provides a notice of intent to amend the land use plan for the Big Sandy planning unit and to prepare an environmental assessment. Several parcels of land were identified for exchange consideration. Public comment was sought on the preliminary issues and planning criteria pertaining to the proposed Teton Valley Exchange.

The original Teton Valley Exchange proposal included lands in addition to those in the Point of Rocks coal tract. This resulted in the need to amend the existing management framework plan (MFP). The proposal has changed and these additional lands are no longer involved. In reviewing the existing MFP and the revised exchange proposal, the BLM has found the proposal is in conformance with the MFP and, therefore, no plan amendment is needed.

The lands included in the current exchange proposal are identified in the MFP as acceptable for further consideration for coal development. The MFP decision also states that the lands will be given consideration for exchange proposals.

Therefore, we are rescinding the July 18, 1984, **Federal Register** Notice that informed the public that we initiating a plan amendment. We are also amending the December 31, 1985, **Federal Register** Notice which indicated that we were preparing a plan amendment. We are proceeding with further consideration of the exchange proposal through NEPA compliance and public input but without a plan amendment.

ADDRESS: Alan Stein, Assistant District Manager, Planning and Environment Assistant, Bureau of Land Management.

P.O. Box 1869, Rock Springs, Wyoming 82902–1869, (307) 382–5350.

Donald H. Sweep,

District Manager.

[FR Doc. 86–2238 Filed 1–31–86; 8:45 am]

BILLING CODE 4310-22-M

U.S. Mineral Surveyor Appointment Examination

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of examination.

SUMMARY: The Division of Cadastral Survey, will conduct an examination to license U.S. Deputy Mineral Surveyors on April 23 and 24, 1986, in Anchorage, Alaska. The examination site in Alaska will be the only location at which the examination will be given. Individuals who pass the examination and the subsequent review of references will be allowed to perform U.S. mineral surveys in all locations under the mineral jurisdiction of the Bureau of Land Management. U.S. Deputy Mineral Surveyors must observe the same regulations concerning conflicts of interest as other Federal employees. A roster of mineral surveys is maintained by each BLM State Office and is made available to interested claimants, who then arrange for the survey with an individual surveyor for the survey and payment. The survey is performed under the jurisdiction and approved by the appropriate BLM Cadastral Survey office. Interested individuals should submit a completed SF 171 (available at most Federal offices), including signature and date, by March 17, 1986, to the following address: Director (720), Bureau of Land Management, Premier Bldg., Rm. 201, 18th and C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Daniel T. Mates, Land Surveyor, Division of Cadastral Survey, Washington, DC (see address above) at (202) 653–8798.

Robert F. Burford,

Director, Bureau of Land Management.

January 28, 1986.

[FR Doc. 86–2227 Filed 1–31–86; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Intention to Extend Concession Permits; Adrift Adventures in Canyonlands, Inc., et al.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to extend the following concession permits authorizing the permittees to continue to provide commercial float trips for the public on the waters and Federally owned lands and facilities along the shores of the Green and Colorado Rivers through Canyonlands National Park and a portion of Glen Canyon National Recreation Area from the south boundary of Canyonlands National Park to the Hite area for a period of one (1) year from January 1, 1986, thrugh December 31, 1986:

1. Adrift Adventures in Canyonlands, Inc.
2. Adventure Bound, Inc.
3. Colorado Outward Bound School
4. Colorado River & Trail Expeditions, Inc.
5. Descent River Expeditions
6. Don Hatch River Expeditions, Inc.
7. Holiday River Expeditions, Inc.
8. Moki Mac River Expeditions, Inc.
9. North American River Expeditions, Inc.
10. Outlaw River Expeditions, Inc.
11. San Juan Expeditions, Ltd.
12. Sheri Lynn Griffith Expeditions
13. Tag-A-Long Tours, Ltd.
14. Tag-A-Long Tours, Ltd.
15. Tex's River Expeditions
16. Tour West, Inc.
17. Western River Expeditions
18. World Wide River Expeditions, Inc.

The foregoing concessioners have performed their obligations to the satisfaction of the Secretary under existing permits which expire by limitation of time on December 31, 1985, and therefore, pursuant to the Act of October 9, 1965, as cited above, are entitled to be given preference in the renewal of the permits and in the negotiation of any new permits as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioners, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Rocky Mountain Region, 655 Parfet Street, P.O. Box 25287, Denver, Colorado, 80225, for information as to the requirements of the proposed contract.

Dated: January 17, 1986

Jack W. Nechels,

Regional Director, Rocky Mountain Region.

[FR Doc. 86–2197 Filed 1–31–86; 8:45 am]

BILLING CODE 4310-70-M

Environmental Statements, Availability, etc.; Denali State Park, AK

ACTION: Notice of Intent to Prepare an Environmental Impact Statement for Proposed Development of a Major Visitor Destination in the Curry Ridge Area of Denali State Park, Alaska.

SUMMARY: The National Park Service is issuing this notice to advise the public that, subject to receipt of federal funding, an environmental impact statement will be prepared for the proposed development of a major visitor destination on the south side of the Alaska Range in the Curry Ridge area of Denali State Park. The state park is adjacent to Denali National Park and Preserve, and the National Park Service is cooperating with the State of Alaska to plan and possibly develop facilities there. A major goal of the cooperative effort is to integrate planning of the South Denali destination with planning for both the state and the national park in order to better provide for public use and enjoyment of the area and for resource management.

The proposal calls for development of lodging and visitor information services as well as access to the site. The following developments would probably be included: a visitor center, lodge(s) and restaurant(s) at one or more sites, campgrounds, parking lot(s), a tramway, a youth hostel, trails, and maintenance buildings and utilities for the facilities. The tentative range of alternatives which may be analyzed in the environmental impact statement includes varying locations for some or all of the proposed facilities. Sites could be in the forested area close to the George Parks Highway, on bench lands part way up Curry Ridge, in the subalpine zone or on the alpine ridge top. A no action alternative will also be considered. A brochure describing the proposal and alternatives in further detail is available for public review.

Through this notice and through public workshops to be scheduled and announced in the Alaskan news media, the National Park Service and the State Division of Parks and Outdoor Recreation are seeking comments on the scope of alternatives and issues to be considered in the preparation of the environmental impact statement. The draft environmental impact statement is

expected to be ready for public review in the spring of 1987.

DATES: Written comments should be received no later than April 4; however, comments received after that date will be considered to the extent possible.

ADDRESS: Comments may be sent to: Janet McCabe, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503–2892, phone (907) 261–2697.

FOR FURTHER INFORMATION: For a brochure about the proposal or further information about the proposal or the environmental impact statement, please contact: Janet McCabe (address and phone above) or Cheryl Green, State of Alaska, Division of Parks and Outdoor Recreation, 3601 C Street, Suite 1280, Pouch 7–001, Anchorage, Alaska 99510, phone (907) 762–4506.

Boyd Evison,

Regional Director.

[FR Doc. 86–2292 Filed 1–31–86; 8:45 am]

BILLING CODE 4310-70-M

Development Concept Plan and Environmental Impact Statement To Relocate Facilities From the Fishing Bridge Area, Yellowstone National Park, WY

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of additional scoping information for the proposal to relocate 660 campsites and other facilities from the Fishing Bridge Area to other areas within Yellowstone National Park.

Background

The object of the Development Concept Plan (DCP) is to implement the 1974 Master Plan for Yellowstone National Park which states ". . . eliminate accommodations and services from this existing developed area in order to facilitate restoration of critical wildlife habitats at Yellowstone Lake's outlet. The existing campground, trailer village, store and service station will, however, be retained for an interim period."

The removal of facilities is also in accordance with the biological opinion of the U.S. Fish and Wildlife Service for the Grant Village development pursuant to section 7 of the Endangered Species Act. The biological opinion stated that the Grant Village development would cause no jeopardy to the threatened grizzly bear provided NPS followed through on its intention to remove the facilities at Fishing Bridge. As a part of the section 7 consultation, NPS committed to removal of the campground and the recreational vehicle (RV) park by 1985 and 1986, respectively.

A Notice of Intent to prepare an Environmental Impact Statement (EIS) for the DCP for the Fishing Bridge Area was published in the **Federal Register** of February 22, 1985 (50 CFR Part 7405). That notice pointed out that the EIS will address the removal of facilities from the Fishing Bridge area with replacement in other areas of the park. The Notice of Intent also announced that a packet of information for scoping would be made available in the near future. That packet, in the form of a newsletter, was distributed on May 5, 1985. This notice announces the availability of additional scoping information and the National Park Service's (NPS) desire to obtain further public input on the issues, alternatives, and impacts to be discussed in the EIS.

Issues

To date, the NPS has identified the following issues concerning relocating the campground and the recreation vehicle park:

—The impacts to the grizzly bear and natural environment.
—The type of visitor experience.
—Site condition (soils, drainage, vegetation, slope).
—Design and construction costs.
—Effects to the economics of the gateway communities and tax revenue of Park and Teton counties.
—Effects on cultural resources.

Site Selection Factors

Based upon these issues, the following site selection factors were developed to analyze each potential relocation site:

—Minimal effect on grizzly bear habitat and travel patterns.
—Acceptable site conditions.
—Visitor amenities including access to Yellowstone Lake, other park features, and existing developed areas for visitor services.
—Cost to connect to existing utility systems including water, sewer and electricity.
—Potential economic effects on the park's gateway communities due to possible alteration of visitor travel patterns to and from the park.
—Potential for presence of archeological sites.

Alternatives

Relocation alternatives under consideration at this time are as follows (refer to accompanying map):

—Construct the recreation vehicle park and campground at the Gull Point/Weasel Creek area.
—Construct the recreation vehicle park at the Weasel Creek area and distribute the campground campsites throughout the park by expanding existing campgrounds and building a new campground in the Mesa Road area (minimum 100 sites).
—Construct the recreation vehicle park at Grant Village and distribute the campground campsites in the Lake/Bridge Bay area (Elephant Back, Natural Bridge and Bridge Bay campground sites).

In addition to the relocation alternatives, the planning team will also be analyzing a no action option (status quo) and an alternative that examines leaving all of the facilities at Fishing Bridge (i.e., fencing the recreational vehicle park and campground, redesigning the campground and other management actions that reduce human/bear conflicts).

Impacts

Impacts associated with the alternatives include:

—Impacts on wildlife and other natural resources, within the Fishing Bridge area, relocation sites and the park as a whole.
—Impacts on cultural resources (significant historic buildings and archeological sites).
—Cumulative impacts on the visitor experience, including visitor accommodations and services.
—Economic and social impacts on gateway communities and adjacent county tax revenues.
—Impacts on park concessioners.

Public Response

The public is invited to suggest other issues, alternatives or impacts which should be addressed in the EIS. Such comments will be received for 30 days following the publication of this notice. The comments may be sent to the Superintendent, Yellowstone National Park, Wyoming 82190.

Newsletter

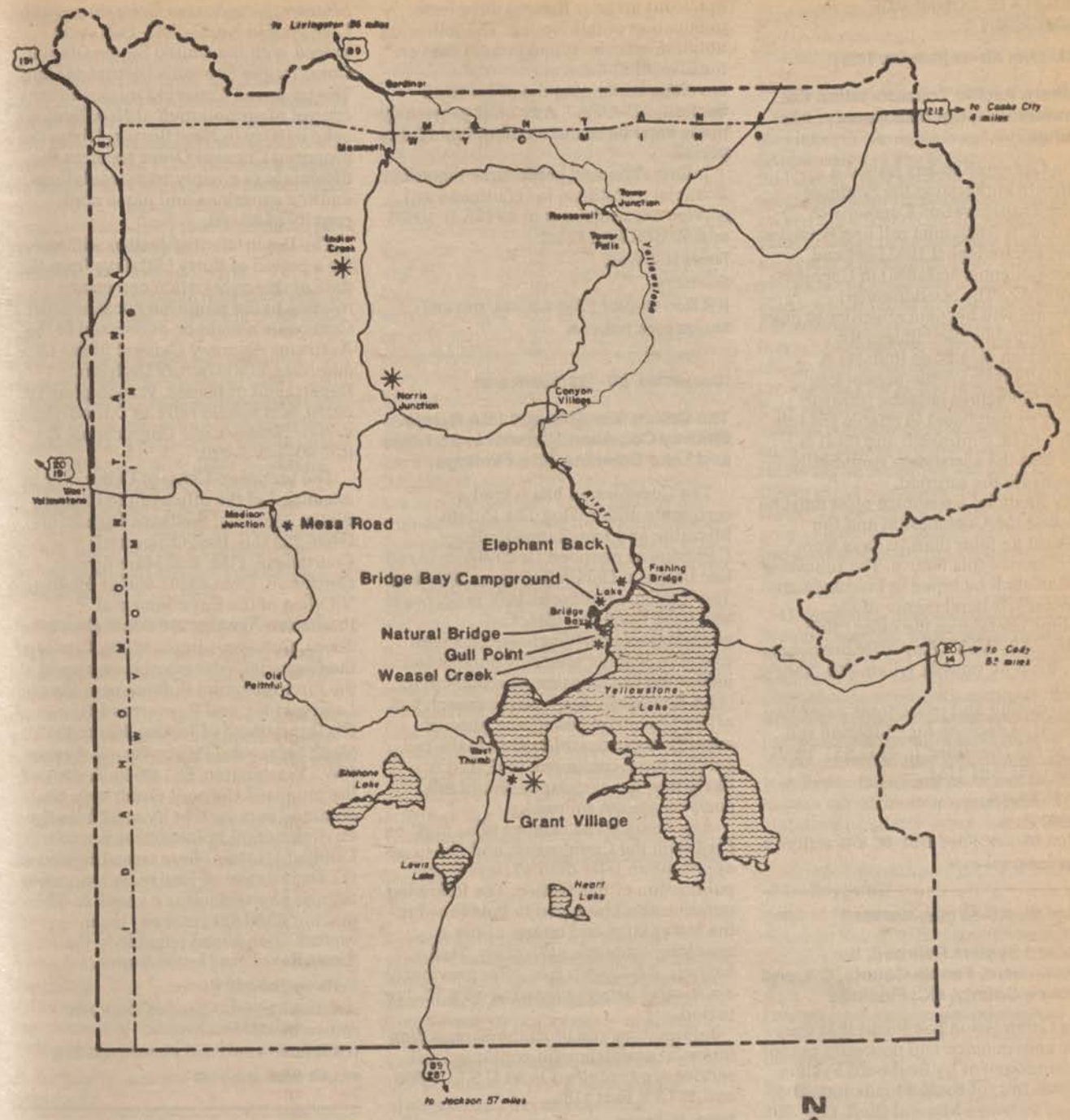
A newsletter containing additional information will soon be available from the park. To receive a copy of this newsletter, supply your name and address to the Superintendent.

Dated: January 23, 1986.

Lorraine Mintzmyer,

Regional Director, Rocky Mountain Region.

BILLING CODE 4310-70-M



CAMPSITE RELOCATION ALTERNATIVES
YELLOWSTONE NATIONAL PARK

United States Department of the Interior – National Park Service

[FR Doc. 86-2293 Filed 1-31-86; 8:45 am]
BILLING CODE 4310-70-M

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INTERSTATE COMMERCE COMMISSION

[Docket No. AB-12 (Sub-No. 102)]

Southern Pacific Transportation Co. Abandonment; Cochise County, AZ; Findings

The Commission has issued a certificate authorizing the Southern Pacific Transporation Company to abandon its 5.619-mile rail line between Bisbee Jct. (milepost 1085.064) and Bisbee (milepost 1090.863) in Cochise County, AZ. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assitance (through subsidy or purchase) to enable the rail service to be continued; and (2) It is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 86–2246 Filed 1–31–86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 154)]

Seaboard System Railroad, Inc., Abandonment, Fannin County, GA, and Cherokee County, NC; Findings

The Commission has found that the public convenience and necessity permit the abandonment by Seaboard System Railroad, Inc., of its 20.45-mile line of railroad between Mineral Bluff, GA (milepost KG–396.36), and Murphy, NC (milepost KG–416.81).

An abandonment certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) It is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 86–2367 Filed 1–31–86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-101 (Sub-No. 6]

The Duluth Missable and Iron Range Railway Co.; Abandonment in St. Louis and Lake Counties, MN; Findings

The Commission has issued a certificate authorizing The Duluth Missable and Iron Range Railway Company to abandon its 29.403-mile rail line between Duluth (milepost .901) and Two Harbors (milepost 26.0) in St. Louis and Lake Counties, MN. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 86–2426 Filed 1–31–86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Order Pursuant To Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 17, 1986 a proposed Consent Order in *United States* v. *New Boston Coke Corporation*, Civil Action No. C–1–84–1427, was lodged with the United States District Court for the Southern District of Ohio. The proposed Consent Order concerns control of air pollution at New Boston's coke battery in New Boston, Ohio. The proposed Consent Order requires the defendant to comply with regulations limiting emissions and pay a civil penalty of $5,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *New Boston Coke Corporation*, D.J. Ref. 90–5–2–1–710.

The proposed Consent Order may be examined at the office of the United States Attorney, Southern District of Ohio, 220 U.S. Post Office and Courthouse, Fifth and Main Streets, Cincinnati, Ohio 45202 and at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Order may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount $2.30 (10 cents per page reproduction costs) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–2240 Filed 1–31–86; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Performance Standards for Program Years (PY) 1986 and 1987

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of performance standards for PY 1986 and 1987.

SUMMARY: Section 106 of the Job Training Partnership Act (JTPA) requires the Secretary of Labor to prescribe performance standards for adult and youth training programs under Title II-A and dislocated worker programs under Title III of JTPA. Based on the experience since JTPA programs began, the numerical values of the performance standards are being changed for Program Years (PY) 1986 and 1987. (July 1, 1986 - June 30, 1988).

EFFECTIVE DATE: July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Hugh Davies. Telephone (202) 376-6700.

SUPPLEMENTARY INFORMATION: On January 2, 1986, a document was published in the **Federal Register** at 51 FR 132 announcing new performance standards for Job Training Partnership Act (JTPA) Title II–A adult and youth training programs and Title III dislocated worker programs. Such performance standards are required by JTPA § 106. Interested parties were invited to submit written comments through January 22, 1986.

A. Purpose of Performance Standards

The Secretary of Labor (Secretary) issues performance standards in order to determine whether the basic measures of JTPA, increased earnings and employment and reduced welfare dependency, are being met. On the basis of the Secretary's Performance Standards, Governors must set standards for each of their service delivery areas (SDAs). To date, the Secretary has set seven standards for the initial nine-month period of JTPA and for Program Years (PY) 1984–85. In the January 2, 1986 issuance, the Secretary proposed to revise the numerical values for these same seven standards. This issuance presents those standards and also consolidates into one document the implementation instructions for performance standards.

B. Authority to Issue Performance Standards

Section 106 of the Act directs the Secretary to establish performance standards for Title II–A adult and youth and Title III dislocated worker programs.

C. Discussion of Comments

The Department of Labor (Department) received 17 written comments on the proposed issuance within the comment period. The following is a summary of the comments on each of the major issues raised by the commenters and the Department's response

Applicable Period

Comments were received that section 106(d)(4)(A) of JTPA requires that the Secretary not modify the standards more often than once every two program years. The Department agrees and hereby clarifies that these standards are applicable to PY 1986 and 1987.

Adult Standards

Commenters expressed concern that the adult standards were too stringent, and that as a result programs would be forced to avoid serving the hard to serve. The new cost per entered employment standard would result in shorter training. The Department has very carefully considered the likely impact of the standards on the persons served and the types of training and services provided. The manner in which the standards have been set is based on the expectation that three quarters of the service delivery areas (SDAs) will exceed the standards if performance is comparable to PY 1984. Therefore, it is the judgment of the Department that the adult standards are not excessively stringent. Furthermore, Governors have the authority to adjust the standards in accordance with section 106(e) of JTPA to recognize circumstances which would make the accomplishment of the standards more difficult. To assist in this, the Department has provided a methodology to the Governors to make such adjustments. This methodology also adjusts the cost standard for the length of the training. Therefore, Governors need not be concerned that SDAs will be penalized for longer term training.

Youth Standards

Some commenters felt that the positive termination standards were too stringent and that the Department was assuming that all areas would have youth competency systems in place. During the last two years, the Department has encouraged the development of youth competency systems and has provided the opportunity for competency attainment to count as a positive termination. The Department also advised that the positive termination standards should be adjusted to account for competency systems still under development. The Department now considers that a sufficient period of time has been allowed to implement youth competency systems and that it is reasonable to set standards which recognize that such systems are now operational. Among those SDAs that reported youth competency attainments in PY 1984, the positive termination rates were, on average, higher than the proposed levels. Accordingly, the Department is retaining the proposed youth standards.

Incentives for Exceeding the Standards

Some commenters questioned the provision in the section entitled "Application of the Performance Standards" that an SDA cannot be precluded from receiving an incentive award if it exceeds all seven of the standards set in accordance with the Secretary's measures. They wanted to preclude the provision of incentives to SDAs which failed to reach particular administrative requirements, such as levels of expenditure, youth service levels, or linkage requirements. Other commenters specifically indicated that they supported this provision, and that it would be counter to the statute to apply such additional requirements before receiving an incentive award. The Department considers that withholding incentive awards is an inappropriate way to enforce statutory or other State imposed administrative requirements.

Sanctions

Commenters expressed concern that the provision for sanctioning under section 106(h) of JTPA, described at Section D.2. of the issuance would cause confusion regarding the authority to take sanction action as described in other parts of the statute. Therefore, it is hereby clarified that this issuance in no way limits the authority of the Governor to take sanction action pursuant to statutory authority other than Section 106(h).

Signed at Washington, D.C., this 30th day of January, 1986.

Roger D. Semerad,

Assistant Secretary for Employment and Training.

Appendix

[Training and Employment Information Notice No. ——].

January 1986.

Performance Standards for PY 1986 and 1987

Authority: Job Training Partnership Act, Pub. L. 97–300, Section 106, Implementing Regulations, 20 CFR 629.46, March 15, 1983.

1. *Purpose.* To transmit to State JTPA Liaisons the Secretary's National Numerical Standards and implementing instructions for Program Years (PY) 86 and 87.

2. *Background.* Section 106 of JTPA directs the Secretary to establish performance standards for adult, youth and dislocated worker programs. In accordance with the Act, the Secretary established standards based on CETA

data for the initial nine month period of JTPA and for the first two program years. The Secretary also issued implementing instructions for the first two program years and parameters for adjusting the Secretary's Standards. This issuance provides new numerical levels for existing standards for Title II–A, a goal for Title III programs, and updated and consolidated implementing instructions.

3. *Performance Measures and the Secretary's National Numerical Standards for PY 86 and 87 for Title II–A.* For PY 86 and 87, the performance measures will remain the same as they have been since the inception of JTPA.

Four of the Secretary's Standards have been derived from PY 84 JTPA Title II–A performance data and have been set at a point at which 75% of the SDAs are expected to exceed. These standards are the entered employment rates for adults, adult welfare recipients, and youth, and the cost per entered employment. The average wage standard remains unchanged from the previous PY 84/85 level. This level reflects the Departmental commitment to encouraging placement in better quality jobs. The youth positive termination rate is set higher than the PY 84 experience in anticipation of increased positive outcomes due to youth competency attainment. The youth cost per positive termination remains unchanged at the PY 84/85 level to allow for systemwide enrichment of services to youth.

Adults

A. *Entered Employment Rate:* 62%.

B. *Cost per Entered Employment:* $4374.

C. *Average Wage at Placement:* $4.91.

D. *Welfare Entered Employment Rate:* 51%.

Youth

A. *Entered Employment rate:* 43%.

B. *Positive Termination Rate:* 75%.

C. *Cost per Positive Termination:* $4900.

4. *Implementation Provisions.* In accordance with Section 106 of the Act, the following implementation requirements must be followed:

A. *Required Standards.* Governors must set for each SDA a numerical performance standard for each of the seven Secretary's Standards.

B. *Setting the Standards.* The Governor may set the SDA's standards by using the Secretary's numerical standards or by adjusting standards. In accordance with Section 106(e), such adjustments must conform to the Secretary's parameters, which are as follows:

1. Procedures must be:
- Responsive to the intent of the Act,
- Consistently applied among the SDAs,
- Objective and equitable throughout the State,
- In conformance with widely accepted statistical criteria;

2. Source data must be:
- Of public use quality,
- Available upon request;

3. Results must be:
- Documented,
- Reproducible; and

4. Adjustment factors must be limited to:
- Economic factors,
- Labor market conditions,
- Characteristics of the population to be served,
- Geographic factors; and
- Types of services to be provided.

The Department has developed an adjustment methodology which is available for Governors to use at their option. The Department's methodology conforms to the parameter criteria cited above. Should the Governor choose to use an alternate methodology, or make additional adjustments, it must conform to the parameter criteria and be documented in the Governor's Coordination and Special Services Plan prior to the program year to which they apply.

In the case of an appeal from an SDA concerning the imposition of a reorganization plan for failure to meet the performance standards for two consecutive years, the Secretary will make the final decision in accordance with section 106(h)(4) of the Act and 20 CFR 629.46(d)(6). In making this decision, the Secretary will be predisposed to uphold the Governor's determination concerning the application of the performance standards, if the Governor elected to use the nationally developed adjustment methodology to vary the performance standards. If the Governor, however, elected to use an alternative methodology to vary the standards, the Secretary will make this decision on a case by case basis, based on the validity of the methodology and its uniform application throughout the State.

The State Job Training Coordinating Council must have an opportunity to consider adjustments to the Secretary's Standards and to recommend variations.

C. *Performance Standards Definitions.* Governors must compute the performance of their SDAs in accordance with the definitions included in the attachment.

D. *Application of the Performance Standards.* In applying the Secretary's Standards, Governors must conform to the following:

1. An SDA cannot be precluded from receiving an incentive award in accordance with section 202(b)(3)(B) if it exceeded all seven of the standards set in accordance with the Secretary's measures. Standards beyond those specified by the Secretary can be the basis for making rewards.

2. An SDA can only be sanctioned under section 106(h) for failure to meet standards set in accordance with the Secretary's measures. If an SDA fails to meet for two consecutive years all seven of the standards set in accordance with the Secretary's measures, then it must be sanctioned by the Governor. The Governor's policy on sanctions may provide for sanctioning for missing fewer than all seven of the standards.

3. Eligibility for incentive awards pursuant to section 202(b)(3)(B) must be based on exceeding, not just meeting standards.

4. The amount of the incentive award must be determined by the extent to which the standard(s) are exceeded, and not simply based on the number of standards exceeded. Further adjustments can be made to the incentive award amount, including adjustments based upon grant size, service to the hard-to-serve, and expenditure level.

5. Governors must specify their incentive award policy under section 202(b)(3)(B) and sanctions policy under section 106(h). State sanctioning policy must include a definition of "failure to meet" and the timeframe that constitutes the period on which sanction action will be taken. The failure to receive incentive funds for two consecutive years does not necessarily constitute failure to meet the standards pursuant to section 106(h).

5. *Performance Standards Provisions for Title III.* Governors are required to set an Entered Employment Rate standard for their Title III formula funded programs and are encouraged to establish goals for Cost per Entered Employment. Because there are no incentive or sanction provisions for Title III performance, the Title III standard serves as a guide for the expected level of performance. In addition, the Secretary is specifying a national goal of *60* % for the Entered Employment Rate. This goal has been established on the same basis as the Secretary's Standards for Title II–A; that is, if Title III programs continue to perform in the same manner as they did in PY 84, that 75% of the system should exceed the goal.

16. *Inquiries.* Questions concerning this issuance may be directed to Hugh Davies on 202-376-6700.

Attachment—Definitions for Performance Standards

The following defines the Title II-A performance standards:

Adult

1. Entered Employment Rate.—Number of adults who entered employment as a percentage of the number of adults who terminated.
2. Cost per Entered Employment.—Total expenditures for adults divided by the number of adults who entered employment.
3. Average Wage at Placement.—Average wage for all adults who entered employment at the time of termination.
4. Welfare Entered Employment Rate.—Number of adult welfare recipients who entered employment at termination as a percentage of the number of adult welfare recipients who terminated.

Youth

1. Entered Employment Rate.—Number of youth who entered employment at termination as a percentage of the number of youth who terminated.
2. Positive Terminated Rate.—Number of youth who entered employment at termination plus the number of youth who met one of the youth employability enhancement* definitions at termination as a percentage of the number of youths who terminated.
3. *Cost per Positive Termination.*—Total expenditures for youth divided by the number of youth who entered employment at termination plus the number of youth who met one of the youth employability enhancement* definitions at termination.

*Youth Employability Enhancements include:

a. Attained PIC Recognized Youth Employment Competencies
b. Entered Non-Title II Training
c. Returned to Full-time School
d. Completed Major Level of Education
e. Completed Program Objectives (14-15 year olds)

[FR Doc. 86-2396 Filed 1-31-86; 8:45 am]

BILLING CODE 4510-30-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the advisory Committee on Reactor Safeguards will hold a meeting on February 13-15, 1986, in Room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting as published in the **Federal Register** on January 21, 1986.

Thursday, February 13, 1986

8:30 A.M.-8:45 A.M.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 A.M.-10:45 A.M.: radioactive Waste Management and Reactor Radiological Effects (Open)—The members will hear and discuss activities considered during the January 15-17, 1986 subcommittee meeting on radioactive waste management and control, including proposed *de minimis* levels for radioactive releases to the environment, as well as features related to research, regulation, and policy coordination on this subject. Representatives of the NRC Staff, DOE, and the nuclear industry will participate as appropriate.

10:45 A.M.-11:45 A.M.: ACRS Procedures and Administration (Open)—The ACRS members will hear and discuss the remainder of the report of its Subcommittee on Procedures and Administration regarding the recommendations of the Panel on ACRS Effectiveness and other aspects of ACRS procedures and practices.

11:45 A.M.-12:15 P.M.: Future Activities (Open)—The members will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

1:15 P.M.-3:15 P.M.: Safety Research Program (Open)—The members will discuss the proposed ACRS Annual Report to the U.S. Congress regarding the proposed NRC safety research program and budget for FY 1987.

3:15 P.M.-5:15 P.M.: Three Mile Island Unit 2 Core Criticality (Open)—Members of the Committee will hear and discuss the report of its subcommittee regarding the actions being taken to prevent criticality of the Three Mile Island Unit 2 core during its disassembly.

5:15 P.M.-6:30 P.M.: San Onofre Nuclear Generating Station (Open/Closed)—The Committee members will hear and discuss the report of its subcommittee regarding loss of AC power at this Station and resulting plant damage due to water hammer.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this matter.

Friday, February 14, 1986

8:30 A.M.-9:30 A.M.: NRC Outage Inspection Program (Open)—The members will hear and discuss a briefing by representatives of the NRC Staff regarding an NRC Outage Inspection Program.

9:30 A.M.-11:45 A.M.: Security Provisions at Nuclear Power Plants (Open)—The Committee will consider proposed changes in NRC regulations regarding protection of nuclear plants from sabotage by insiders. Representatives of the NRC and the nuclear industry will take part in the discussion as appropriate.

11:45 A.M.-12:00 Noon: ACRS Subcommittee Activities (Open)—The members will hear and discuss the report of designated subcommittee activities regarding the seismic qualification of safety-related equipment in nuclear power plants.

1:00 P.M.-3:30 P.M.: Use of the "Check-Operator" Concept for Requalification of Reactor Operators (Open)—The members will hear and discuss reports from representatives of the NRC Staff, the FAA, and the nuclear industry regarding the use of a "check-operator" for requalification of nuclear power plant operators.

3:30 P.M.-5:00 P.M.: DOE High-Level Radwaste Program (Open)—The members will hear and discuss a briefing by representatives of DOE regarding the anticipated DOE program for the management and disposal of civilian, high-level, radioactive wastes.

5:00 P.M.-6:30 P.M.: Reactor Operations (Open/Closed)—The members will hear and discuss reports from the designated ACRS subcommittee, members of the NRC Staff, and representatives of the nuclear industry as appropriate regarding recent operating events and incidents at nuclear power stations. The subcommittee will also report to the full Committee regarding NRC proposed changes in requirements for nuclear power plant technical specifications.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the topics being considered.

Saturday, February 15, 1985

8:30 A.M.-12:00 Noon: Preparation of ACRS Reports (Open)—Discuss proposed reports to the U.S. Congress and to the NRC regarding items considered during this meeting.

1:00 P.M.-3:30 P.M.: ACRS Subcommittee Activities (Open)—Discuss ACRS reports regarding safety-related matters proposed by ACRS

Members including: seismic design margins in nuclear facilities; the state of nuclear power plant safety; reactor pressure vessel pressurized thermal shock-related transients; containment sump performance in nuclear stations; *de minimis* levels of radiation dose in risk calculations; venting of nuclear power plant containments.

Procedures for the conduct of and participation of ACRS meetings were published in the **Federal Register** on October 2, 1985 (50 FR 191). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R. F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information [5 U.S.C. 552b(c)(4)].

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 A.M. and 5:00 P.M.

Dated: Janaury 29, 1986.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 86–2296 Filed 1–31–86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, March 6, 1986
Thursday, March 13, 1986
Thursday, March 20, 1986
Thursday, March 27, 1986

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW, Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 632–9710).

February 13, 1986.

William B. Davidson, Jr.,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 86–2322 Filed 1–31–86; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–24006; 70–6790]

Central and South West Corp. Proposal to Increase Debt and Decrease Equity Investment; Extend Period of Investment Authority

January 28, 1986.

Central and South West Corporation ("CSW"), P.O. Box 220164, Dallas, Texas 75222, a registered holding company, has filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to sections 6(a), 7, 9(c)(3) and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50 thereunder.

By order dated January 22, 1985 (HCAR No. 23578), CSW and its non-utility subsidiary, CSW Financial, Inc. ("CSWF"), were authorized to form a joint venture with Manufacturers Hanover Leasing Corporation ("Manufacturers"), to be owned 80% by CSW or CSWF, and 20% by Manufacturers. The Commission authorized the investment by the joint venture, CSW Leasing, Inc. ("Leasing"), of up to $250 million ($200 million from CSW and $50 million from Manufacturers) in the equity portion of leveraged leases to finance up to $1 billion of leased property through December 31, 1986. Of the $200 million from CSW, $60 million would come from equity contributions from CSW and $140 million from borrowings by CSW, CSWF or Leasing on the terms set forth in the order. Through September 30, 1985, Leasing had invested $18,809,381 in the equity portion of leveraged leases.

CSW now proposes to extend its investment authority through December 31, 1987. CSW further proposes that

CSW's $200 million of authority will be comprised of up to $40 million in equity (20% equity) with the amount of borrowings and guarantees by CSW and Leasing not to exceed $160 million (80%). As of September 30, 1985, CSW's investment in the equity of Leasing was $18,813,000 of which $13,453,420 was from borrowings by CSW. CSW's experience since January has indicated that this rigid 70%–30% mix debt and equity has been difficult to maintain and that a 20% equity ratio would be more appropriate, allow for a more efficient use of capital, and would permit greater flexibility without any significant adverse impact on borrowing costs.

The post-effective amendment to the application-declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 21, 1986, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–2318 Filed 1–31–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35–24004; 70–7197]

Central Power and Light Co., and Central and South West Corp.; Proposed Equity Investment in Subsidiary

January 28, 1986.

Central and South West Corporation ("CSW"), 2400 San Jacinto Tower, Dallas, Texas 75201, a registered holding company, and its electric utility subsidiary, Central Power and Light Company ("CP&L"), P.O. Box 2121, Corpus Christi, Texas 78403, have filed an application-declaration with this Commission pursuant to section 6(a), 7, 9(a), 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43, 45, and 50(a)(3) thereunder.

CSW proposes to make equity investments in CP&L, either through cash capital contributions or purchases of common stock or both, in an amount up to $100,000,000 through December 31, 1987. CP&L intends to use the additional equity to finance its construction expenditures and to repay short-term outstanding from time to time. CSW's equity investments will be financed from internally generated funds.

The application-declaration and any amendments thereto are available for public inspection through the Commission's office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 21, 1986, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall idenfify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–2318 Filed 1–31–86; 8:45 am

BILLING CODE 8010-01-M

[Release No. 35–24005; 70–7192]

Georgia Power Co.; Proposal To Enter Into Pollution Control Financing and To Issue and Sell First Mortgage Bonds and Preferred Stock

January 28, 1986.

Georgia Power Company ("Georgia"), 333 Piedmont Avenue, N.E., Atlanta, Georgia 30308, an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application-declaration with this Commission pursuant to sections 6(b) and 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42 and 50 thereunder.

Georgia proposes the financing of certain pollution control facilities ("Facilities") at one or more of its electric generating plants located in various counties in the state of Georgia, and/or the issuance and sale of its first mortgage bonds ("New Bonds") with a term of from five to thirty years in one or more series from time to time not later than March 31, 1987 in the aggregate principal amount of up to $550,000,000.

If any part of the $550,000,000 is used for Facilities, it is proposed that the Development Authority ("Authority") of each such county involved will issue its revenue bonds ("Revenue Bonds") to make loans to Georgia, pursuant to a loan agreement, for the Facility located in its county ("Project") in return for a non-negotiable promissory note ("Note"). The Note will provide for payments corresponding to payments of the principal, premium, and interest on the Revenue Bonds.

In order to obtain the benefit of ratings for the Revenue Bonds equivalent to the rating of Georgia's first mortgage bonds, Georgia may secure its obligations under the Note by issuing Collateral Bonds, delivering a Letter of Credit, causing an insurance policy to be issued, conveying to the Authority a subordinated security interest in the Project or other property of Georgia, or guaranteeing the payment of the principal, premium, if any, and interest on the Revenue Bonds.

Georgia also proposes to issue and sell up to $100,000,000 of preferred stock, without par value, but a stated value of up to $100 per share ("New Preferred Stock") in one or more series from time to time not later than March 31, 1987. Both the New Bonds and the New Preferred Stock will be sold in compliance with Rule 50 unless Georgia requests an exception there from by amendment.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 21, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by Certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, application-declaration as filed or as it

may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-2320 Filed 1-31-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14923; 812-6268]

Pioneer Bond Fund, et al.; Application for an Order Pursuant to Section 11(a) of the Investment Company Act of 1940 Permitting Certain Offers of Exchange

January 28, 1986.

Notice is hereby given that Pioneer Bond Fund (the "Reduced Loan Fund"), Pioneer Fund, Pioneer II and Pioneer Three ("Load Funds" and collectively with the Reduced Loan Fund, the "Funds"), and The Pioneer Group, Inc. (the "Underwriter," and collectively with the Funds, "Applicants"), 60 State Street, Boston, MA 02109, filed an application on December 24, 1985, and amendments thereto on January 17 and 23, 1986, for an order pursuant to section 11(a) of the Investment Company Act of 1940 (the "Act") approving the terms of certain offers of exchange. Applicants also request that such order extend to future open-end investment companies ("Additional Funds") for which the Underwriter serves as principal underwriter. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the applicable provisions thereof.

According to the application, the Funds are registered as open-end investment companies under the Act. Applicants state that the Underwriter serves as principal underwriter for the Funds and maintains a continuous public offering of shares of each Fund. Applicants further state that shares of each of the Load Funds are offered at their respective net asset values plus a sales charge, and that shares of the Reduced Loan Fund are offered at net asset value plus a sales charge that is lower than the sales charge applicable to the Load Funds. Applicants represent that the sales charge for shares of the Load Funds is a percentage of the public offering price for such shares, which percentage varies with the amount of the investment in accordance with the following table:

Amount of purchase	Sales charge as percentage of offering price
Less than $10,000	8.50
$10,000 but less than $25,000	7.75
$25,000 but less than $50,000	6.00
$50,000 but less than $100,000	4.50
$100,000 but less than $250,000	3.50
$250,000 but less than $400,000	2.50
$400,000 but less than $600,000	2.00
$600,000 but less than $5,000,000	1.00
$5,000,000 or more	.25

Applicants further represent that the sales charge for shares of the Reduced Load Fund is also a percentage of the public offering price for such shares, which percentage varies with the amount of the Investment and is assessed in accordance with the following table:

Amount of purchase	Sales charge as percentage of offering price
Less than $100,000	4.50
$100,000 but less than $250,000	3.50
$250,000 but less than $400,000	2.50
$400,000 but less than $600,000	2.00
$600,000 but less than $5,000,000	1.00
$5,000,000 or more	.25

Applicants state that the Underwriter may become principal underwriter for certain Additional Funds, which may be considered Load or Reduced Load Funds. With respect to the order sought on behalf of the Additional Funds, Applicants undertake to limit any future exchange offers involving such Additional Funds to the terms and conditions described in the application.

Applicants state that exchanges of shares of certain Funds for shares of other Funds are currently permitted without a sales charge, based on the relative net asset values of such shares at the time of the exchange. Subsequent to the granting of the order requested herein, Applicants intend that all offers of exchange will be effected as follows:

(1) Shares of any Fund ("Initial Fund") that were not acquired by an exchange for shares of another Fund, and reinvested shares accrued on such shares, may be exchanged ("Initial Exchange") for shares of any Fund ("Successor Fund") based on relative net asset value plus the sales charge applicable to the shares of the Successor Fund less the higher of (i) the sales charge, if any, the exchanging shareholder paid for the shares of the Initial Fund or (ii) the sales charge, if any, applicable to the Initial Fund at the time of the exchange;

(2) Shares of any Fund ("Predecessor Fund") acquired after an Initial Exchange by one or more exchanges for shares of one or more Funds, and reinvested shares accrued on the shares of such Predecessor Fund, may be exchanged for shares of any Successor Fund based on relative net asset value plus the sales charge applicable to the shares of the Successor Fund less the higher of (i) the total sales charge, if any, the exchanging shareholder paid with respect to the acquisition of the shares of the Initial Fund and all exchange transactions thereafter leading to the acquisition of the shares of the Predecessor Fund or (ii) the sales charge, if any, applicable to the Predecessor Fund at the time of the exchange.

Applicants state that exchange transactions may be effected only if the net asset value of the shares to be exchanged is at least equal to the minimum initial amount required for investment in a particular Fund or the minimum amount required for reinvestment in the shares to be acquired, as the case may be. Applicants represent that a shareholder desiring to exercise an exchange will be provided a prospectus of the Fund whose shares such shareholder wishes to acquire by an exchange transaction. Applicants also state that they may terminate the exchange privilege, in which case no notice of such termination will be furnished to the shareholders other than through the Funds' next effective prospectuses.

Applicants assert that that purpose of the exhcange plan is to permit a shareholder whose investment objectives change to transfer his or her investment into a different Fund, without incurring an additional full sales charge. Applicants note that it is possible under limited circumstances for an exhcanging shareholder to pay a lower aggregate sales charge for a Fund's shares than a shareholder acquiring such Fund's shares by direct purchase. Nonetheless, Applicants submit that the exchange plan provides equitable treatment for existing shareholders of each Fund as well those exchanging into a Fund without disrupting the Funds' distribution system.

Applicants represent that commissions payable to sales representatives in connection with the proposed exchange transactions will typically be less than commissions on direct purchases. In view of this fact, Applicants believe there is not sufficient financial incentive for a sales representative of the Underwriter to

initiate exchanges for his or her own benefit. Applicants represent that the Underwriter has established sufficient internal monitoring and review procedures to ensure that exchanges are made only for the benefit of the shareholder and in accordance with the shareholder's investment objectives.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 21, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-2321 Filed 1-31-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22842; File No. SR-AMEX-86-02]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc.; Relating to Extending the Close of Trading and Exercise Cut-off Time for Options on the AMEX's Major Market Index ("XMI") From 4:10 P.M. to 4:15 P.M.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 16, 1986 the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX" or "Exchange") proposes to amend Exchange Rules 1 and 903C to extend trading hours in Major Market Index (XMI) options until 4:15 p.m., and to amend Rule 980C to similarly extend the cut-off time for exercising XMI options.

Italics indicate material proposed to be added.

Rule 1. Hours of Business

No change.

. . . Commentary

.01 No change.

.02 Options Trading After 4:10 p.m.—The Board has determined that no options series shall freely trade after 4:10 p.m. *except that Major Market Index options shall freely trade until 4:15 p.m. each business day.* However, one trading rotation in any class of options contracts may be effected even though employment of the rotation will result in the effecting of transactions on the Exchange after 4:10 p.m., provided:

(1) Trading in the underlying security opens or re-opens after 3:30 p.m. (N.Y. time); and promptly thereafter, the Exchange commences an opening or re-opening rotation in the corresponding options; or

(2) Such rotation was intitated due to unusual market conditions pursuant to Rule 918, and (i) notice of such rotation is publicly disseminated no later than the commencement of the rotation or 4:00 p.m. (N.Y. time), whichever is earlier; or (ii) notice of such rotation is publicy disseminated after 4:00 p.m. but before 4:10 p.m., and the rotation does not commence until ten minutes after news of such rotation is publicly disseminated.

(3) A trading rotation commenced under either (1) or (2) above, must be authorized by two (2) Floor Officials.

If prior to 4:10 p.m., a trading rotation is in progress and a Senior Floor Official and a Floor Official determine that a final trading rotation is needed to assure a fair and orderly market, the rotation in progress shall be halted and such final rotation begun as promptly as possible after 4:10 p.m. Any trading rotation commenced after 4:10 p.m. must be approved by a Senior Floor Official..

Rule 903C Series of Stock Index Options

(a) No Change.

(b) No Change.

(C) on the business day prior to the expiration of a particular series of index options, such options shall freely trade until 4:10 p.m., *unless the Board of Governors has established different hours of trading for certain index options.*

. . . *Commentary*

.01 Transaction in Major Market Index options may be effected on the Exchange until 4:15 p.m., each business day, including the business day prior to expiration.

Rule 980C Exercise of Stock Index Option Contracts

(a) With respect to stock index option contracts, clearing members are required to follow the procedures of The Options Clearing Corporation for tendering exercise notices, and member organizations are also required to comply with the following procedures.

(i) A memorandum to exercise any stock index option contract, *other than an option contract on the Major Market Index,* issued or to be issued in a customer or market maker account at The Options Clearing Corporation must be received or prepared by the member organization no later than 4:10 p.m. and must be time stamped at the time it is received or prepared. Except with respect to exercises of 25 or more contracts pursuant to sub-paragraph (iii) of this Rule, member organizations must accept exercise instructions until 4:10 p.m. each business day.

(ii) A memorandum to exercise any stock index option contract, *other than an option contract on the Major Market Index,* issued or to be issued in a firm account at The Options Clearing Corporation must be prepared by the member organization no later than 4:10 p.m., and must be time stamped at the time it is prepared.

(iii) Any member or member organization that intends to submit an exercise notice for 25 or more stock index option contracts, *other than option contracts on the Major Market Index,* in the same series on the same business day on its own behalf or on behalf of an individual customer must deliver an "exercise advice" on a form prescribed by the Exchange to a place designated by the Exchange no later than 4:10 p.m. For purposes of determining compliance with this Rule, exercises for all accounts controlled by the same individual or entity must be aggregated.

(iv) With respect to options on the Major Market Index, members and member organizations must comply with the provisions of sub-paragraphs (i), (ii), and (iii) of this Rule, but the deadline for such compliance shall be 4:15 p.m.

(b) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under current Exchange rules, Major Market Index (XMI) options, as well as all other index options, trade until 4:10 p.m. every day. In comparison, the XMI futures contract is traded on the Chicago Board of Trade (CBT) until 4:15 p.m. every day. Market participants frequently assume positions in XMI futures contracts to hedge their positions in the XMI options and, conversely, hedge their options contracts with futures contracts.

To coordinate the daily close of trading in the Amex's XMI options with the close of trading in the CBT's XMI futures contract, the Exchange proposes that Exchange Rules 1 and 903C be amened to extend trading hours in XMI options until 4:15 p.m. At present, market participants who assume positions in both XMI futures and options contracts are unable to adjust their positions in the XMI options in response to price movements in the XMI futures during the last five minutes of futures trading. Since the Amex has seen a surge in XMI options trading volume since the introduction of XMI futures in July 1984, the synchronization of the close of trading in both XMI options and futures is likely to further enhance depth and liquidity in the options market.

Further, the rule change also would benefit market participants using XMI options by ensuring the availability of last sale information of the component XMI stocks. Occasionally, in periods of extremely heavy trading volume, last sale information for the underlying stocks may not be complete at 4:10 p.m. due to tape runoff.

The Exchange also proposes to amend the corresponding exercise requirements for index options. Exchange Rule 980C currently requires members and member organizations to prepare and time-stamp all index option exercise instructions by 4:10 p.m. The Rule also requires that "exercise advices" be delivered to the Exchange trading floor by 4:10 p.m. when 25 or more index option contracts in the same series are to be exercised for an account. The 4:10 p.m. cut-off time was established to prevent option holders from having an unfair advantage of deciding whether to exercise their options based on news disseminated after the close of trading. Since it is proposed that XMI options trade until 4:15 p.m., a similar cut-off time needs to be established for persons who wish to exercise such options.

The proposed changes are consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange by providing investors with additional trading opportunities for XMI options. Therefore, the proposed rule changes are consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Options Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change whould be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submisison, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 24, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

January 27, 1986.

[FR Doc. 86-2315 Filed 1-31-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22819; File No. SR-BSE-85-9]

Self-Regulatory Organizations; Proposed Rule Change by Boston Stock Exchange, Inc., Relating to Amendments to Chapter XIV of the Boston Stock Exchange Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 13, 1985, the Boston Stock Exchange, Inc. ("BSE"), filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which items have been prepared by the BSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to enhance the effectiveness of floor clerks by requiring them to pass

the Floor Member Examination within three months of their registration. An unregistered clerk cannot assist members in transmitting or executing orders prior to passing the examination.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* The proposed change under Chapter XIV of the BSE Rules of the Board of Governors provides that any individual desiring registration as a floor clerk must (i) submit an application to the Exchange, (ii) be fingerprinted, and (iii) pass the Exchange-administered Floor Member Examination.

Under the proposed rule change, an individual with the consent of the Exchange, may perform limited clerical duties prior to passing the Floor Member Examination, but cannot assist members in transmitting or executing orders prior to passing the examination.

In addition, a floor clerk performing limited clerical duties with the consent of the Exchange for three months without having passed the Floor Member Examination shall be subject to revocation of such consent.

(2) *Basis.* The statutory basis for the proposed rule change is section 6(b)(5) of the Securities Exchange Act of 1934, as amended, in that the rule will enhance the training of those clerks employed by member firms on the Trading Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Boston Stock Exchange does not believe that the proposed change will have an adverse impact upon competition. The proposed measures are designed to improve floor clerk effectiveness.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

On April 26, 1984, the Board of Governors of the BSE chartered the Special Committee on Specialists, chaired by William F. Devin. The Committee was charged with reviewing and evaluating the specialist system at the BSE and with making recommendations to strengthen that system. During the succeeding months, comments were solicited from all members of the BSE as well as from a broad spectrum of the brokerage community. These comments were solicited through questionnaires, personal interviews and general requests for comment. The changes proposed by this filing represent conclusions reached by the Committee after consideration of the comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 24, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 22, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-2316 Filed 1-31-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22837; File No. SR-MSE-85-6]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Midwest Stock Exchange, Inc. Relating to Amendments to MSE Article XXX, Rule 6, Blue Book Section and Cabinet Procedures

The Midwest Stock Exchange, Inc. ("MSE") submitted on June 21, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend MSE Article XXX, Rule 6; Blue Book Section C, Rules 1, 2, 10, and 17, and the MSE's Cabinet Procedures.[1] The amendment to Article XXX, Rule 6, which also will be incorporated, when amended, into new Rule 2 [2] under Section C of the MSE Blue Book, requires that two members of the Committee on Floor Procedure rule on an opening of an MSE-traded issue where any unusual condition exists and for a third member to break any impasse regarding such rulings. The MSE also has proposed to require under new Rule 2 that an MSE specialist display a continuous two-sided market following an independent opening by a specilist in a dually listed issue. Further, Rule 2, as proposed, provides that specialists not participating in an independent MSE opening are not thereby relieved of their obligations, among other things, to disseminate a continuous two-sided market.

[1] The MSE also proposed an amendment to Article XXXIV, Rule 9, regarding the extent to which registered market markers may participate in the opening of a security, which provided that such participation could comprise up to one-third of the net *MSE* imbalance of purchase and sale orders on the Exchange (emphasis added). MSE's Amendment No. 1 to the filing, submitted on November 13, 1985, however, proposed, among other things, to eliminate the addition to existing Rule 9 (regarding the "MSE" imabalance), so that the net effect would be to leave the language of the existing rule unchanged. *See* discuision of Amendment No. 1 in note 3, *infra*.

[2] The proposal would establish a new Rule 2 under Section C, and renumber the other rules under this Section (*i.e.*, existing Rules 2 through 23) accordingly.

In addition, Section C, Rule 1 would require that quotes disseminated by a specialist prior to the opening in the primary market must be firm and available to any order seeking execution at that price. Proposed Section C, Rule 11 would clarify that the MSE specialist is not required to fill at the opening a pre-opening limit order in the MSE Book unless there was price or quote penetration in the primary market of the price of the MSE order, and would add a provision limiting the specilist's obligation to fill such order (except where a floor official determiend otherwise based on the amount of opening volume at the limit price) until there is exhustion of the bid or offer at the limit price in the primary market. Further, proposed Section C, Rule 18 clarifies that the specialist's book be properly represented during the trading session, and provides that (1) the book be attended from one half hour before the opening to one half hour after the close, and (2) the time requirement may be increased by the Committee on Floor Procedure during "unusual trading periods."

The amendments to Cabinet procedures will govern order eligibility for the Cabinet System, procedures governing priorities for order executions, order processing and trade reporting, notification of two floor officials for executions more than ½ point away from the last sale price, and procedures for agency cross transactions.[3]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22218, July 11, 1985) and by publication in the **Federal Register** (50 FR 29034, July 17, 1985). No comments were received regarding the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and the regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 27, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-2317 Filed 1-31-86; 8:45 am]

BILLING CODE 8010-01-M

[3] The MSE submitted to the Commission Amendment No. 1 to the proposed rule in response to comments from the Commission staff. In addition to the proposed amendment discussed in note 1, *supra*, Amendment No. 1 would amend proposed Rule 11 under Blue Book Section C by clarifying the example illustrating the proposed Rule, and amend proposed Rule 1 under Section C by changing the hour from which the specialist's book must be attended to 8:00 a.m. in accordance with the MSE's new earlier opening time. In addition, the Amendment proposes an adjustment to 8:00 a.m. for certain proposed Cabinet System Procedures. Further, Amendment No. 1 extends the requirement of notification of two floor officials to executions more than ¼ point from the last sale price for stocks of $10 or less.

[Release No. 34-22838; SR-NYSE-85-44]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

The New York Stock Exchange, Inc. ("NYSE") submitted on December 12, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend the NYSE regulatory oversight services fee ("regulatory fee") imposed under NYSE Rule 129 by increasing the charge to its members and member organizations for regulatory oversight services from $0.35 to $0.42 per $1,000 of gross revenues as reported in the FOCUS report.[1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22725, December 18, 1985) and by publication in the **Federal Register** (50 FR 53049, December 27, 1985). No comments were received with respect to the proposed rule change.

The primary purpose of the proposed rule change is to permit the NYSE to continue to recover costs associated with conducting FINOP regulatory oversight of its members. According to the NYSE, the revenues generated from the regulatory fee are used exclusively to defray FINOP related expenses incurred by the Exchange as DEA pursuant to Rule 17d-1 under the Act.[2] The NYSE estimates FINOP revenues for 1986 to be $18.3 million and notes that, even with the proposed fee increase, there will be a projected loss of $12.0 million in 1986 in the Regulatory Services Group,[3] $4.8 million of which would be related to FINOP activities.[4]

When the Commission, in March 1984, approved an increase in the regulatory oversight fee from $0.13 to $0.26 per $1,000 gross revenues, the Commission indicated that any subsequent increases in the fee would have to be accompanied by a detailed cost justification that would specify for each FINOP-related cost center those expenses related exclusively to the NYSE's responsibilities as DEA under Rule 17d-1.[5] In addition, the

[1] The Commission first approved the NYSE's regulatory fee on gross revenues in Securities Exchange Act Release No. 20337, October 31, 1983; 48 FR 51188, November 7, 1983 (SR-NYSE-83-34). The purpose of the fee is to provide revenues for NYSE's financial and operational (FINOP) services and examinations of its members. The Commission approved an increase in the regulatory fee from $0.13 to $0.26 per $1,000 gross revenues as reported in the member's FOCUS report in Securities Exchange Act Release No. 20729, March 6, 1984; 49 FR 9525, March 13, 1984 (SR-NYSE-84-7) and an increase from $0.26 to $0.35 per $1,000 gross revenues in Securities Exchange Act Release No. 21643, January 9, 1985; 50 FR 2363, January 16, 1985 (SR-NYSE-84-34).

In its October 31, 1983, order approving the NYSE's initial regulatory fee under NYSE Rule 129, the Commission stated that a fee based on gross revenues is appropriate insofar as the NYSE is the designated examining authority ("DEA") pursuant to Rule 17d-1 under the Act with respect to conducting the FINOP examination of its members. The Commission noted that no other self-regulatory organization ("SRO") has responsibility for conducting such examinations, which necessarily include inspections of aspects of a member's business not limited to its activities in NYSE-listed securities.

[2] For those members for which the NYSE is the DEA, the NYSE is responsible for review and subsequent action on FOCUS reports, any schedules or forms thereof, and any other generally applicable financial reporting requirements imposed by other SROs, the NYSE, or the Commission. The NYSE's responsibility with respect to these financial reports includes review of compliance with Commission, NYSE, and other applicable SRO rules related to capital, margin, operations, books and records, reporting, and filing of documents. The NYSE is not responsible for conducting such a review for members for which the NYSE is not the DEA and the regulatory fee would not be imposed on such members.

[3] As of July 1, 1985, the Member Firm Regulatory Services Division was reorganized and renamed the Regulatory Services Group. The reorganization entailed dividing the cost centers of the Member Firm Regulatory Services Division into: (1) Member Firm Regulation Division, which is primarily responsible for the examination and surveillance of member firms, and sales practice requirements, and (2) Enforcement and Regulatory Standards Division, which is concerned primarily with enforcement activities, rule development and the upgrading of automated systems to analyze member firms' financial and operational standing.

[4] *See* Exhibits B, C and F of File No. SR-NYSE-85-44. The NYSE includes as FINOP revenues the regulatory fee on members' gross revenue, Regulation T extension fees, commodity exchange surveillance charges, and other service fees such as late filing, rule interpretation handbook, NYSE Guide, Fingerprinting and FOCUS Feedback charges. The NYSE estimates that FINOP revenues will increase from $15,514,000 in 1985 to $18,251,000 in 1986, assuming the $0.42 fee level is imposed. Total direct FINOP expenses will increase from $21,173,000 in 1985 to $23,006,000 in 1986, which includes an estimated increase in general and administrative expenses allocated to FINOP from 1985 to 1986.

[5] *See* Securities Exchange Act Release No. 20729, March 6, 1984; 49 FR 9525, March 13, 1984 (SR-NYSE-84-7).

Commission recommended that the NYSE devise suitable means for tracking the amount of staff time devoted to carrying out the Exchange's FINOP responsibilities.

The NYSE has submitted statistical data with respect to the instant filing. Among the data provided were: (1) A financial summary of 1985 and 1986 estimated revenues and expenses of the NYSE's Division of Member Firm Regulation/Enforcement and Regulatory Standards ("Division") including detailed revenue breakdowns for FINOP, Sales Practices, and "Other" areas; (2) a time-tracking system summary for regulatory review units within the Division, including for a five-week period from the week of August 16, 1985 to the week of September 13, 1985, the number of staff hours devoted to FINOP activities, sales practices, market surveillance and other areas;[6] and (3) other information relating to expenses and staff allocations for 1985 and 1986.

Based on the data supplied to the Commission in connection with the proposed regulatory fee increase, the Commission is satisfied that the estimated 1986 revenues generated by the proposed fee will not exceed those NYSE expenses directly related to the Exchange's exclusive FINOP responsibilities as DEA under Rule 17d-1. The Commission will continue to monitor the NYSE's allocation of various Division cost centers to FINOP and non-FINOP areas and to assess the accuracy of the NYSE's projections with respect to the FINOP-related expenses of those cost centers. The Commission also will require cost justification for any further increases in the regulatory fee.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder. In particular, the Commission finds that the proposed increase in the regulatory fee is consistent with section 6(b)(4) of the Act, which requires that exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members. A charge of $0.42 per $1,000 gross revenue is reasonable in light of the examination services that the NYSE is required to perform [7] and in view of the likelihood that such charges do not appear to exceed the Exchange's anticipated expenses in conducting FINOP-related services. The charge is equitable insofar as all NYSE members are assessed on the same basis.

The Commission finds further that the proposed increase in the regulatory fee is consistent with section 6(b)(8) of the Act, which requires that an exchange's rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Because all NYSE members are assessed on the same basis, and the fee relates to transactions effected other than on the NYSE only to the extent the NYSE is required to perform regulatory oversight functions with respect to such transactions, the Commission does not view the fee as having a significant adverse competitive effect on NYSE members or on other markets. Any burden imposed by such charges is clearly outweighed by the regulatory need to monitor the financial responsibility of NYSE members with respect to all of their financial and operational activities.

It is therefore Ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 27, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-2314 Filed 1-31-86; 8:45 am]

BILLING CODE 8010-01-M

[6] The time-tracking system summary indicated that 90% or more of staff time within the NYSE's regulatory review units was devoted to FINOP activities. This is consistent with the NYSE's projections of staff and expense allocations in connection with the Division's FINOP-related activities. The NYSE has instituted an automated time-tracking system and will provide the Commission with periodic summaries of regulatory review units' staff time allocated to FINOP and non-FINOP areas.

[7] In its October 1983 order approving the NYSE's $0.13 fee, the Commission stated that its determination that the fee is consistent with Section 6 of the Act is directly based on the universal nature of the FINOP examination. Self-regulatory organization fees calculated on members' gross revenues intended to support services directly related to transactions effected solely in that marketplace or for examinations which do not focus on all aspects of a member's business would not appear to be appropriate. *See* Securities Exchange Act Release No. 20337, October 31, 1983, note 18.

[Release No. 34-22844; File No. SR-OCC-85-21]

Self-Regulatory Organizations; Options Clearing Corporation; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 23, 1985, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Introduction

The proposed rule change would add a new section 602A to OCC's rules, adopting a new margin system for non-equity options and would make technical and conforming amendments to OCC's Rules and By-Laws to accommodate the new margin system. OCC beleives that the new system provides a more principled basis for margining non-equity options positions than OCC's present system and substantially reduces the potential for over and under-margining of such positions. Under the proposed system, options positions on the same underlying asset or on groups of closely-related underlying assets are margined as integrated portfolios. OCC stated that the system uses options price theory to project the cost of liquidating each portfolio of positions in the event of an assumed "worst case" change in the price of the underlying asset and sets OCC's margin requirements to cover that cost.

II. Description

Like OCC's current non-equity margin system, the new system calculates margin differently for market professionals than for public customers.

A. Firm and Market-Maker Accounts

Under the new system, OCC's Margin Committee will organize all classes of options (*i.e.*, puts and calls and European and American) on the same underlying asset into "class groups." Where the underlying assets for two or more class groups exhibit close price correlation, as determined by OCC (*e.g.*, broad-based stock indexes), those class groups will be organized, for margin purposes, into larger "product groups." The positions comprising a product group or class group (if the class group is not part of a larger product group) will be margined as integrated portfolios.[1]

The daily margin requirement for a class group or a product group has two components: "premium margin," which covers the cost of liquidating the

[1] OCC informed the Commission that when international options (*see* File No. SR-OCC-85-13, Securities Exchange Act Release No. 22354 (August 23, 1985), 50 FR 35340 (August 30, 1985)) are introduced, classes of international options will be deemed to constitute separate class groups. Furthermore, margin credits for class groups and product groups consisting of international options will not be used to reduce margin requirements for other options positions and vice versa.

positions comprising the group at the previous day's closing prices, and "additional margin," which covers the projected incremental cost of liquidating those positions in the event of a major adverse change in the price of the underlying asset.

The first step in calculating margin requirements is to net offsetting positions in each series within each class group (*i.e.*, long and short positions in the same series and type of option) against each other. This can be done in a firm or market-maker account because OCC has a lien on all long positions in the account to cover the Clearing Member's obligations on short positions in the account. The net long or short position in each series of options is used to calculate the appropriate margin.

The next step is to calculate premium margin for the non-offsetting positions in the class group. Premium margin, which is determined on the basis of the previous day's closing price, represents a position's current liquidating value (cost). Short positions result in a margin requirement and long positions result in a margin credit equal to the position's current liquidating value. Net premium margin for a class group may either result in a margin credit or requirement, depending on whether the positions comprising the class group would liquidate to a deficit or a credit.

The next set of calculations is to determine the appropriate additional margin for a class group. As noted above, additional margin is determined by comparing the appropriate additional margin for a class group. As noted above, additional margin is determined by comparing the actual liquidating value of a group with the theoretical liquidating value of the group at several predetermined underlying asset prices. One underlying asset price would include the maximum one-day increase that OCC should anticipate in the underlying asset price; another would include the maximum one-day decrease in the underlying asset price.[3] Further, in order to protect against certain trading strategies that may have their greatest potential loss at a strike price (*e.g.*, a butterfly spread), OCC will calculate a theoretical liquidating value for an underlying asset price equal to any option strike price that falls within the boundaries of the first two underlying asset prices set by OCC. Each theoretical liquidating value would be compared to the current liquidating value to determine at which potential underlying asset price OCC is most at risk. The difference between this "worst case" liquidating value and the current liquidating value would be the additional margin required.

To determine the maximum one-day price movement in the underlying asset that OCC should anticipate (the "margin interval"), OCC will analyze historical price changes in the underlying asset. OCC's current criteria are that there should be enough additional margin (i) to protect against a price movement equal to or exceeding at least 95% of the daily price changes for the last three months [4] and (ii) to ensure that additional margin would be eroded by no more than 70% in the event of a price change equal to the average daily price change during that period.

Once OCC determines the appropriate margin interval, OCC will calculate the theoretical liquidating value of the option at an underlying asset price equal to (i) the current asset price plus the margin interval (the "up-side projection"); (ii) the current asset price minus the margin interval (the "down-side projection"); and (iii) any strike price between the asset prices in (i) and (ii). To provide additional protection, OCC will presume the per-unit cost of liquidating out-of-the-money short call positions in the upside projection and short put positions in the downside projection, would increase by at least 25% of the margin interval.[5]

That process would produce two or more projected liquidating values (costs) for the class group. Each of those values would be compared with current liquidating value or cost (*i.e.*, net premium margin for the class group). After comparison, the largest upside variation (*i.e.*, the greatest change in liquidating value, positive or negative, in the event of an upward movement in the price of the underlying asset), together with the largest downside variation, would be saved for use in further calculations. If an upside or downside variation reflects an increase in liquidating cost or a decrease in liquidating value, that variation is assigned a positive sign for margin calculation purposes (signifying a margin requirement). Variations reflecting a decrease in liquidating cost or an increase in liquidating value are assigned a negative sign (signifying a margin credit).

If the class group is not part of a product group, the additional margin requirement for the class group would be an amount equal to either the upside variation or the downside variation, whichever is positive (*i.e.*, reflects an increase in liquidating cost or a decrease in liquidating value for the positions comprising the class group). In cases where both variations are positive, the additional margin requirement would be the larger of the two; and where both are negative, the additional margin requirement would be zero. Unlike premium margin, which can be either positive or negative, additional margin is always either positive or zero. The total margin requirement or credit for a class group that is not part of a larger product group would be an amount equal to the sum of the net premium margin requirement (credit) for the class group and the additional margin requirement for the class group. If premium margin for the class group is positive, generating a margin requirement, additional margin will accordingly add to that requirement. If premium margin is negative (as would be the case for a class group predominantly comprised of long positions), additional margin will ordinarily reduce the resulting margin credit (but never to less than zero, because the long positions that generated the credit might cease to be assets, but would never become liabilities).

If the class group is part of a larger product group, additional margin would be calculated only at the product-group level. First, all negative upside and downside variations for the class groups comprising the product group (*i.e.*, variations reflecting a decrease in liquidating cost or an increase in liquidating value) would be reduced by a percentage predetermined by OCC. OCC stated that the purpose of this reduction is to compensate for any lack of correlation in price movements among the class groups comprising the

[3] This maximum one-day price movement is called the "margin interval" and would be set by OCC. OCC stated that it would adjust, as it currently does, the margin interval on a monthly basis (or more frequently) to assure margin adequacy.

[4] OCC stated that it intends to consider whether it should use one year's worth of data in addition to the three months' data it now uses to provide both a short- and long-term volatility measure, using the higher volatility estimate of the two to set margin intervals.

[5] OCC believes that for deep out-of-the-money short options, the options pricing model they propose to adopt may predict that these options values will be insensitive to the potential one-day change in the underlying asset. This would result in no additional margin requirement for that option. However, should the option move much more than expected and approach an "in-the-money relationship to the underlying asset price, OCC would be unprotected on a short option with a rapidly rising value. Therefore, OCC proposes that some adjustment to the model is necessary to provide for an absolute minimum additional margin amount. OCC stated that its initial research indicates that it is appropriate to increase the per-unit liquidating cost of the option by 25% of the margin interval. OCC further stated that it will continue to research the problem to determine whether further refinements are appropriate.

product group and the amount of the percentage would depend on the degree of correlation OCC observed for the particular product group involved.

Next, the upside variations for all class groups in the product group would be combined (*i.e.*, added algebraically), as would the downside differences. Whichever combined result was positive (*i.e.*, reflected a net increase in liquidating cost or a net decrease in liquidating value for the positions comprising the product group) would constitute the additional margin requirement for the product group.

Total margin requirement or credit for the product group as a whole would be an amount equal to the algebraic sum of the premium margin requirements for each class group in the product group, increased (in the case of a net premium margin requirement) or reduced (in the case of a net premium margin credit) by the additional margin requirement for the product group. In summary, if the positions in a product group (or a class group that was not part of a product group) would liquidate to a deficit, the total margin requirement for the group would be an amount equal to the sum of that deficit and the additional margin requirement for the group. If the positions in the group would liquidate to a credit, the total margin credit for the group would be an amount equal to that credit minus the additional margin requirement for the group.

Finally, if the total margin amount for a product group or a class group that was not part of a product group turned out to be a credit (*i.e.*, the combined result was negative), 50% of that credit would be applicable against the margin requirements for other class groups and product groups in the account. If the account as a whole showed a margin credit, there would be no margin requirement.

B. Customers' Accounts and Firm Non-Lien Accounts

OCC does not have a lien on firm non-lien accounts or long positions carried in customer accounts except to the extent that they comprise the long legs of customer-identified spreads (*i.e.*, constitute "unsegregated long positions"). Accordingly, OCC's proposal establishes slightly different procedures for margining these accounts:

1. Segregated long positions would not offset short positions in the same series of options, and would be assigned no value for margin calculation purposes.

2. In calculating product group margin, premium margin credits for class groups within the product group would be reduced to zero.

3. In calculating margin for the account as a whole, margin credits for class groups that are not part of product groups would be reduced to zero.

C. Options Price Theory

OCC believes that options price theory is particularly useful for calculating margin requirements because it provides the theoretical worth of an option (*i.e.*, potential liquidating value) when the underlying asset value changes.[6] As shown above, OCC believes that a comparison between the actual market value of an option and the potential liquidating value of that option at a potential future price provides the amount of additional margin necessary to protect OCC.

One of the important calculations in options price theory is the volatility of the price of the underlying asset. OCC stated that there are two basic methods to arrive at a figure representing volatility. One is to use the historical volatility of the underlying asset as measured over any given prior period. The other is to use "implied" or "market" volatility of an option, which involves plugging an option's actual price into the model and solving "backwards" for the volatility implied by that price. OCC stated that because implied volatilities can vary significantly from historical volatilities and because both can vary from day-to-day, there is no single volatility measure that can be classified as a totally reliable predictor of theoretical (or hypothetical) option values across a range of underlying prices. OCC believes, however, that by utilizing the greater of the implied volatility or historical volatility in the valuation process, any error will tend to be on the conservative side and will protect OCC. OCC anticipates that after it has gained some experience using implied volatilities it will be able to stop using historical volatilities entirely for computing daily margin requirements and use historical volatilities solely for evaluating risks associated with concentrated positions.

III. Request For Comments

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the proposed rule change, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.

Copies of the proposed rule change will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number in the caption above and should be submitted by February 24, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 28, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-2313 Filed 1-31-86; *:45 am]

BILLING CODE 8010-01-M

[6] Options price theory is a method which, given a set of inputs (series strike, time of expiration, interest rate, dividends, volatility and underlying asset price), will predict what the option is theoretically worth at a specified price for the underlying asset.

SMALL BUSINESS ADMINISTRATION

Contracting Authority; Certificate of Appointment Exemptions

The officials, including those officially acting in these positions, exempt from needing a certificate of appointment to purchase goods or services or enter into contracts by virtue of their positions are:

The Administrator.
The Deputy Administrator.
The Associate Deputy Administrator for Management and Administration.
Inspector General.
The Associate Administrator for MSB-COD (8a only).
The Assistant Administrator for Administration.

The officials exempt from needing a certificate of appointment by virtue of heading a procurement activity include:

The Director, Office of Procurement and Grants Management.
Regional Administrators.

All other persons needing to enter into contracts or carry out purchases must have a certificate of appointment. This applies to any other activity and official not noted in the above exemptions.

Any other exemptions to the requirement for a certificate of appointment must be issued only in a **Federal Register** document recommended by the AA/MSB–COD and the AA/A and signed by the Administrator. To stay within the intent of the law, the only exemptions that may be legitimate are for a certain few district directors where there is a very high level of 8(a) activity. These will be submitted on a case by case basis by RA's.

Effective Date: February 3, 1986.

Dated: January 22, 1986.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 86–2252 Filed 1–31–86; 8:45 am]

BILLING CODE 8025–01–M

Cleveland Advisory Council; Public Meeting

The U.S. Small Business Administration, located in the geographical area of Cleveland, Ohio, will hold a public meeting at 9:00 a.m. on Thursday, February 13, 1986, at the Anthony J. Celebrezze Federal Building, 1240 East Ninth Street, Room B–1 (located on the cafeteria level of the building), Cleveland, Ohio, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, wrie or call S. Charles Hemming, District Director, U.S. Small Business Administration, 317 AJC Federal Building, 1240 East Ninth Street, Cleveland, Ohio 44199, (216) 522–4182.

Dated: January 24, 1986.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 86–2253 Filed 1–31–86; 8:45 am]

BILLING CODE 8025–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported For Exhibition; Francois Boucher; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the object to be included in the exhibit, "Francois Boucher" (included in the list[1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, NY, beginning on or about February 22, 1986, to on or about May 4, 1986, and the Detroit Institute of Arts, Detroit, MI, beginning on or about May 27, 1986, to on or about August 17, 1986, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: January 28, 1986.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 86–2228 Filed 1–31–86; 8:45 am]

BILLING CODE 8230–01–M

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

Sunshine Act Meetings

Federal Register
Vol. 51, No. 22
Monday, February 3, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, February 10, 1986, 2:00 p.m.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Proposed Revisions to the Federal Sector Complaint Processing Regulations, 29 CFR Part 1613

Closed

1. Proposed Commission Decision
2. Litigation Authorization: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated: January 29, 1986.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 86–2428 Filed 1–30–86; 3:59 pm]

BILLING CODE 6750–06–M

2

NATIONAL LABOR RELATIONS BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: January 29, 1986, 51 FR 3733.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: January 29, 1986, 9:30 a.m.

CHANGE IN THE MEETING: Date and time of Meeting changed to: Thursday, January 30, 1986, 2:00 p.m.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 254–9430.

Dated: Washington, DC, January 29, 1986.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 86–2356 Filed 1–30–86; 11:09 am]

BILLING CODE 7545–01–M

3

NEIGHBORHOOD REINVESTMENT CORPORATION

Audit Committee

TIME AND DATE: 3:00 p.m., Monday, February 3, 1986.

PLACE: Comptroller of the Currency's Conference Room, 490 L'Enfant Plaza, SW.—6th Floor, Washington, DC 20219.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Timothy S. McCarthy, Associate Director, Communications, (202) 653–2705.

AGENDA:

I. Review of FY 1985 Audit and Management Letter

Winnie D. Morton,

Assistant Secretary.

[FR Doc. 86–2350 Filed 1–30–86; 10:32 am]

BILLING CODE 7570–01–M

Federal Register

Monday
February 3, 1986

Part II

Department of Agriculture

Forest Service

Small Business Timber Set-Aside Program; Request for Additional Comments on Final Policy

DEPARTMENT OF AGRICULTURE

Forest Service

Small Business Timber Set-Aside Program

AGENCY: Forest Service, USDA.

ACTION: Request for additional comments on final policy.

SUMMARY: On June 13, 1985, the Forest Service published a notice of adoption of final policy (50 FR 24788) setting forth procedures for administration of the Small Business Timber Set-Aside Program. A minor correction in a table was published July 9 at 50 FR 27997. The Forest Service is now requesting additional comments on the policy as adopted. The adopted policy remains in effect during this additional comment period.

DATE: Comments must be received by April 4, 1986.

ADDRESS: Send written comments to R. Max Peterson, (2400), Forest Service, USDA, P.O. Box 2417, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: David Spores, Timber Management Staff, (202) 447–4051.

SUPPLEMENTARY INFORMATION: Following adoption of the final policy governing the Small Business Timber Set-Aside Program on June 13, 1985, a lawsuit was filed asserting that changes made between the publication of the proposed policy (49 FR 45889) and the adoption of the final policy resulted in violation of the requirements of the Administrative Procedures Act, 5 U.S.C. 551 *et seq.* In settlement of the lawsuit, the Forest Service agreed to solicit additional comments on the final policy as adopted. During this additional comment period, the adopted policy remains in effect.

The text of the final policy is as follows:

A. Establishment of Small Business Shares

1. Definition of Structural Change

The final policy defines structural change, which was not in the proposed policy. This was needed in order to provide a common definition for use in recomputation of market shares. A structural change occurs during a recomputation period when a small or large business firm, that purchased at least 10 percent of the total sawlog volume during the last recomputation period, discontinues operations, or changes ownership (i.e., small business purchased by large business or vice versa). When this structural change occurs, the small business share will be recomputed in accordance with the appropriate procedure, as described in the sections relating to 1981–1985 structural changes, or future structural changes. The necessity for the recomputation of shares due to structural change will be determined by the Forest Supervisor, in consultation with the SBA representative.

There are two conditions that will determine structural change:

1. Change in the size class of the firm(s);

2. The discontinuance of the operation of the firm(s).

In making decisions concerning structural changes, judgment must be exercised about what constitutes "discontinued operations." A mill closing must be carefully evaluated in terms of intent to resume operations. Cessation of operations due to natural disasters beyond the control of a firm must be evaluated in terms of the declared intent to reconstruct and resume operations.

Examples of the factors that should be evaluated in determining whether a firm has discontinued operations are: statement of intent to resume operations; changes in physical site conditions which include the dismantling and/or sale of physical assets; indicated intent to harvest Forest Service timber volume under contract; market and general economic conditions; and planned mill reconstruction.

2. Limit on Shares

The timber set-aside program is designed to ensure that small business firms have the opportunity to purchase a fair proportion of the timber offered for sale in each marketing area. The small business share defines the proportion of the planned timber sale program that will be assured to small business over a 5-year period. When the small business share changes in a market area, the change results in a change in "share percentage points." For example, the small business share may change from 45 percent to 50 percent of the timber sale program within a market area. The proposed policy would have limited small business shares to no greater than 80 percent of the planned timber sale program and would have retained the current policy that shares can not decrease to less than 50 percent of the original base share established in 1971. The current policy permits small business shares of 100 percent, of the planned timber sale program in a market area, which does not represent a fair proportion.

The proposed change received substantial support, although a few individuals suggested some variation in upper and lower share limts. Upon consideration, the Forest Service adopts the provisions of proposed policy and will implement these provisions at the time of the recomputation in FY 1986.

This revision provides a fair market share to small business, permits large business an opportunity to participate in all market areas, and provides the Forest Service an opportunity to enhance utilization through a wider group of potential users.

3. Recomputation of Shares in FY 86—Region 8 (Southern), Region 9 (Eastern) and Region 10 (Alaska)

Under the proposed policy, current procedures would remain in effect, subject to an upper limit on small business shares of 80 percent, and shares in Regions 8 and 9 would be recomputed in FY 1986 based on the small business purchase history for FY 1981–1985.

Comments were near unanimous in support of retaining the present procedure. A few respondents favored no change in the existing procedure, wanted a different effective date, or desired different years of purchase history.

The agency agrees with these comments and has decided not to change the existing procedure, other than to implement the 80 percent upper limit at the time of the FY 1986 recomputation of small business shares in Regions 8 and 9. Continuation of current procedures recognizes the relatively stable marketing situation in Regions 8 and 9 during the current recomputation period.

4. Recomputation of Shares in FY 86—Region 1 (Northern), Region 2 (Rocky Mountain), Region 3 (Southwestern), Region 4 (Intermountain), and the following National Forests in Region 6 (Pacific Northwest): Wallowa-Whitman NF, Colville NF, Ochoco NF, Malheur NF, and Umatilla NF

The proposed policy would have calculated a new small business share in these areas at the end of FY 1985 based on the arithmetic average of the small business purchase and harvest history for 1975–1984.

Substantial comment from small business opposed changing recomputation procedures this late in the current period and argued for retaining existing procedures. Some respondents wanted some National Forests in the eastern part of Region 6 included. Some respondents wanted

recognition of structural changes which occurred in the industry during FY 1981–1985. A few respondents also wanted to include all of Region 5 in this calculation of shares approach rather than under the approach proposed for that Region. Some large businesses favored use of harvest history as the sole basis for establishing new shares for small purchasers in these Regions. They felt harvest history better reflected the actual needs of small business firms rather than purchase history.

The agency agrees with those who favored retaining existing procedures for recomputing the small business share. Overall, market disruptions did not distort purchase and harvest patterns to the extent that resulted in Region 5 and western Forests of Region 6. The five eastern Forests of Region 6 had marketing patterns more closely associated with those of Regions 1–4 and, therefore, fit the small business share recomputation procedures now used. Conversely, the marketing patterns of Region 5 more closely fit those of western Forests in Region 6. The agency also recognizes the need to provide for structural changes in the industry and for unique changes which the current procedure would not effectively represent.

Under the adopted policy, the procedure for share establishment in these areas for use during the period FY 1986–1990 will use small business purchase history from the period FY 1981–1985. When a share changes 5 share percentage points or less, surplus or deficit volumes accrued during the 5-year period will carry forward. Where a share change exceeds 5 share percentage points, one half of the surplus or one half of the deficit volume will be carried forward. This procedure will dampen the impact of market fluctuations during the 5-year period. Where a share change exceeding 5 share percentage points occurs in a market area where salvage operations have significantly disrupted normal purchase patterns, the full surplus or deficit volume may be carried forward.

Where structural changes occur in industry size classes during the period and the recomputed share changes over 5 share percentage points from the previous share, the surplus or deficit volumes will be dropped and not carried forward to the next computation period. Where the recomputed share changes less than 5 share percentage points from the previous share, the surplus or deficit volumes will be carried foward to the next computation period.

If unique circumstances in a market area make deviation from these procedures appropriate, the Forest Supervisor may recommend alternatives to the Regional Forester following procedures outlined under paragraph B.3. Special Recomputations. Examples of unique circumstances include catastrophic natural events which disrupt normal operations or an event which causes substantial damage to a processing facility and results in abnormal delay in repairs.

Implementation of this policy recognizes and provides for the geographic similarity of market conditions during the 5-year period and recognized structural changes which occurred.

5. Recomputation of Shares in FY 86—Region 5 (Pacific Southwest) and Remaining National Forests in Region 6 (Pacific Northwest)

The proposed policy would have compared shares established in 1981 in these Regions with the small business harvest history for 1975–1979. The shares would have been maintained, except where the difference exceeded 10 percent. Then the new share would have been set halfway between the current share and the harvest history for that period. Structural changes in the industry since 1980 would have followed the same policy as for Regions 1–4.

Generally, large business firms felt that the proposed policy recognized the market distortion which occurred during FY 1981–1985 and that the proposed procedure.would represent a more stable situation. About one third of small business respondents agreed with this rationale, including two associations who represent small business firms. Those small business respondents who opposed the proposed policy either wanted no change in the program or felt that data from other years would better reflect actual market conditions. Some small business firms and the associations representing small business argued for the need to use recent data for recognizing structural changes in the industry during FY 1981–1985. A few small business firms in Region 5 felt that a more stable situation existed in that Region during FY 1981–1985 and that purchase history or purchase and harvest history for that period would better reflect actual market conditions.

The Forest Service agrees that the FY 1981–1985 period distorted the market patterns which normally occur in Region 5 and the remaining portion of Region 6, and that adoption of the proposed policy would better recognize a more normal situation. The agency agrees with those who propose a special procedure to recognize structural changes in the industry between FY 1981–1985.

Therefore, under the adopted policy the shares established for use in Region 5 and the remainder of Region 6 during the period FY 1986–1990 will generally remain the same as those established in 1981, which used small business purchase history from the period FY 1976–1980. However, in market areas where the small business harvest history for FY 1975–1979 differed from the established share by more than 10 share percentage points, the small business share will be set half way between the current share and the small business harvest history for that period.

Where structural change occurred during the period 1981–1985, recomputation of the small business share will be based on the small business purchase and harvest history during this period. Surplus and deficit volumes will be carried forward when shares change 5 share percentage points or less. Surplus and deficit volumes will be dropped when shares change over 5 percent.

If unique circumstances in a market area make deviation from these procedures appropriate, the Forest Supervisor may recommend alternatives to the Regional Forester following procedures outlined under paragraph B.3. Special Recomputations.

This policy recognizes the market distortions during the FY 1982–1985 period which caused abnormal purchase and harvest operations. It serves to stablize the market shares to the previous period, which was a more normal 5-year period, except where recognized structural changes have occurred.

B. Future Share Changes

1. Regions 8, 9, and 10

The proposed policy would have continued the current system of establishing shares and have commissioned a two-year study by the Forest Service and SBA to determine the need to change the program in Regions 8 and 9. In Region 10, the set-aside program would have continued to operate based upon a volume quota basis.

This proposal received little comment, except support for completing the study promptly and to ensure that the study does not lead to adoption of restrictive conditions. The Forest Service and SBA will complete a study within the next 2 years which will determine whether changes are needed for future share recomputations in these Regions.

2. All Other Regions

The proposed policy would have stabilized shares at current levels in all market areas. However, where a structural change occurred, shares would have been adjusted at the start of the 6-month period beginning at least 12 months after the change occurred. The basis of change would have been the average of the percentages of purchase and harvest history for the past 5 years. No further recomputations would have occurred.

Large businesses strongly supported these proposed changes. Large business desired prompt recognition of structural change, generally 12 to 18 months after it occurred, and supported use of purchase and harvest data for the 5 years preceding the change. Some individuals suggested various options which use different data and time periods. Small businesses uniformly opposed this proposal or suggested a changed procedure. Small businesses emphasized that the small business share belongs to the small business community-at-large and not to individual entities. Assigning a share to individual mills would add value to them and encourage speculation. Many small business respondents supported a recomputation procedure jointly developed by two of the associations which represent small businesses. The procedure developed by the associations would have based recomputation of small business shares on a combination of small business purchase history and weighted average small business purchase and harvest history. The process would compare both small and large business harvest to purchase history as criteria used to determine the small business share and carryover volume amounts.

The Forest Service agrees with both large and small business respondents who propose use of both purchase and harvest history to recompute the small business share. This reflects the relationship of volume of timber purchased to actual need over a 5-year period. The agency agrees with those elements of the recomputation procedure proposed by small businesses which deal with harvest to purchase performance. However, the agency disagrees with the desirability of making a comparison between the performance of large and small business firms. The Forest Service also agrees with the need to recognize structural change in market area industries and to reflect the change with an adjustment period shorter than 5 years. Also, recomputation procedures must recognize unique situations mentioned by some respondents and provide for them.

3. Special Recomputations

Unique situations may develop which require special recomputations and departure from the established procedure. In such cases the Forest Supervisor, in consultation with the SBA Representative, may propose procedures necessary to adapt to the situtation. The Forest Supervisor will solicit the views of firms operating within the market area before submitting a proposal to deviate from the normal recomputation process to the Regional Forester for approval.

In periods of significant market decline, Forest Supervisors will monitor harvest patterns of both small and large businesses by comparing harvest to purchase volume. Where both follow a similar pattern, the Forest Supervisor will adjust the effects of harvest performance criteria on carryover volume in conjunction with share establishment.

Departure from the standard procedure may also be warranted in the event volumes harvested by either large or small firms vary significantly from normal patterns in the market area as a result of salvage operations, a switch of harvest operations between market areas or ownerships, or other factors. Where such departure from the standard procedure is warranted, it may be achieved by adjusting carryover volumes, adjusting the time period, or by other means.

Implementation of policies in paragraph 2 (a) and (b), and (3) above will moderate the impact of short-term purchase and harvest fluctuations and their influence on the small business share. Inclusion of harvest history in recomputation recognizes the balance needed between purchase and harvest experience in share establishment. Use of both elements more accurately reflects actual raw material needs. The procedure permits recognition of structural change. The policy also helps stabilize market area shares in a responsive manner, and identifies unique situations which require special consideration.

In consideration of these views, the final policy will apply the following procedure for recomputing the small business share for a market area to scheduled recomputations and to those following structural changes in the industry between regular recomputation periods:

a. Regular Scheduled Recomputations

Normally, a scheduled recomputation will occur every 5 years and will use the past 5-year record of sawtimber purchase and harvest data as a basis.

Small business shares will be recomputed using the weighted average purchase and harvest history for small business firms in each market area. For purposes of share calculation, harvest history is based on actual deliveries of sawlog timber to small or large business firms for processing. Data for this calculation will be obtained from the 6-month reports submitted by purchasers for log export control. Carryover of surplus or deficit volumes from the previous period will be based on small business harvest performance. Exhibit 1 displays how harvest performance, calculated as a ratio of harvest to purchase, will be used to adjust carryover volumes.

b. Recomputation Due to Structural Change

Shares will be recomputed following structural change. Use exhibit 1 to adjust carryover volumes. The procedure is designed to provide small business firms the opportunity to maintain their historical share when a firm changes size, but provides a reasonably rapid adjustment of shares to reflect the actual purchase and harvest patterns which develop. Ordinarily, small business shares will be recomputed approximately 3 years after a structural change occurs, based on the purchase and harvest history for that 3-year period. When a recomputation for a structural change would occur within a year of a scheduled recomputation, the scheduled recomputation would be skipped.

C. Purchases by Non-Manufacturers

1. Regions 8, 9, and 10

Under the proposed policy the Forest Service would have retained the current procedure for allocating purchases by non-manufacturers to large and small businesses based on the anticipated size of the processor.

Nearly all comments supported the current procedures for allocating purchases by non-manufacturers. Sale procedures in Regions 8 and 9 provide for purchase of sales based on pre-sale measurement with no further measurement to determine actual harvest volume. The current method of anticipating delivery of sale volume to the respective size class of the processor best applies.

The Forest Service will retain the current procedure. Part of the planned Forest Service-Small Business Administration study will include review of this procedure and evaluation

of alternatives which may more accurately identify delivery source.

This policy recognizes the current method used to offer sales in Regions 8 and 9 and its relationship to tracking non-manufacturer volume to small and large firms. The policy also recognizes the need to evaluate these procedures, particularly in light of the manufacturing requirements discussed in paragraph F.3 below.

2. Regions 1–6

The proposed policy would credit harvest volumes in the 6-month program analysis based on actual deliveries to small or large businesses from open sales purchased by non-manufacturers.

Both large and small businesses support the proposal to credit sale volume purchased by non-manufacturers based on harvest records of delivery. Some large businesses wanted volume credited to the size class of the company processing the timber at the end of the period. Small businesses generally suggested a 3-year rolling average for harvest deliveries. A lesser number suggested use of an overall average with periodic corrections.

The new policy will use current reporting requirements for export control to monitor non-manufacturers' delivery of volume. Use of a 2-year rolling average, updated every 6 months, will develop the percentage of sawtimber which non-manufacturers deliver to each manufacturer size class. For each 6-month period, application of the calculated percentage to open sale volume purchased by non-manufacturers will develop the volume accrued to small businesses in order to determine set-aside needs for the next 6-month period.

This policy will result in more accurate assignment of non-manufacturer-purchased sale volumes and guard against short-term cyclic changes in deliveries.

D. Triggering of Set-Aside Sales

1. The proposed policy would have retained current procedures for triggering a set-aside program when small business firms fail to purchase their share by 10 percent or more. However, under the proposed policy, only a fractional change over 10 percent would not have triggered a set-aside program.

Both large and small businesses strongly supported continuance of the current procedure for initiating set-aside sales. However, small businesses strongly objected to dismissing a set-aside trigger if it occurred by only a fractional amount. They argued that use of the 10 percent figure precisely defines the threshold and avoids further interpretation.

The Forest Service agrees with these comments and will continue the current policy of initiating a set-aside program whenever small businesses fails to purchase their share by 10 percent or more and has dropped the fractional amount provision. Use of an exact percent amount will simplify administration of the set-aside program.

2. The current policy places no limit on the timber volume set-aside during each 6-month period. The proposed policy would have retained the existing process of setting aside a volume of timber equal to the small business share plus the accumulated deficit volume. However, at least 20 percent of the timber volume in each 6-month period would have been open sales.

Comments supported setting aside the deficit plus the small business share when the need to establish a set-aside program resulted and to provide at least 20 percent of the volume in a 6-month set-aside period as open sales. Some large businesses favored setting aside only the deficit. However, analysis has shown that this would not provide assurance that small business firms would have the opportunity to purchase the established small business share in a market area.

Therefore, the policy will be implemented as proposed. However, the Forest Supervisor may elect to use two 6-month periods to eliminate the deficit volume situation. If not eliminated by this time, the Forest Supervisor will act to eliminate it in the next 6-month period, subject to the 20 percent of open sale volume limitation.

This policy continues to recognize the advisability of eliminating a trigger situation requiring set-aside sales as rapidly as possible. It also recognizes the need to provide opportunities for large businesses to participate in the market each period.

E. Selection of Set-Aside Sales

The proposed policy would have continued the current procedure where the Forest Supervisor selects set-aside sales with the concurrence of the local SBA representative. Under the proposal, the tentative selection of set-aside sales in case of a triggered program would occur 60 days prior to the start of the next 6-month period.

This proposal received significant support, although a few large businesses wanted sale selection only by the Forest Service.

The final policy adopts the proposed sale selection process. Forest Supervisors will initiate the selection of tentative set-aside sales early enough to reach agreement with the local SBA representative 60 days prior to the start of the next 6-month period. If agreement cannot be resolved at the local level, the SBA may seek review by the Regional Forester. If not resolved at that level, the issue will be submitted to the Washington Office of the two agencies for resolution. Following review, the Chief of the Forest Service will make the decision.

This procedure will result in early selection of set-aside sales, help establish a firm timber sale program at the beginning of the 6-month period, allow development of a more orderly sale program well in advance of each 6-month period, and should avoid delays in sale offerings.

F. Manufacturing Requirements on Set-Aside Sales

1. Current policy requires that 70 percent of advertised volume from set-aside sales be processed in a small business facility. The proposed policy would have continued enforcement of the 70/30 rule except in Regions 8 and 10.

There was strong support for enforcement of the 70/30 rule.

The policy will continue for all Regions except Regions 8 and 10. Purchasers of set-aside sales may deliver no more than 30 percent of advertised sawtimber sale volume from set-aside timber sales to large business for manufacture. Continuance of the policy permits needed flexibility for purchasers to market their products.

2. The proposed policy would have continued the 50/50 rule for set-aside sale timber in Region 10 and received limited, but highly favorable, comment. Therefore, in Region 10, purchasers of set-aside sales may deliver up to 50 percent of advertised volume of a set-aside to a large business for processing. This policy recognizes the greater marketing flexibility needed in this unique market environment.

3. The proposed policy would have required a 100 percent rule for set-aside sale softwood sawtimber and a 70/30 rule for hardwood sawtimber in Region 8. Currently, the 70/30 rule applies to all sawtimber.

An association which represents small businesses in Region 8 supported the proposed policy on manufacturing requirements for softwood and hardwood sawtimber. However individual comments from some large businesses and ⅓ of individual small business respondents operating in the Southern Region opposed 100 percent delivery of set-aside softwood sawtimber volume to small business

manufacturers. Arguments against 100 percent delivery included inability of some purchasers to dispose of all softwood sawtimber products, reduced opportunity to let special products seek an appropriate level of product use, and elimination of log trading between large and small mills to obtain special raw materials used by each. The Forest Service believes that adequate markets exist with small business firms to provide competitive markets for southern pine sawtimber. The 70/30 rule which applies to all other species of sawtimber will permit marketing flexibility. Therefore, in Region 8, the adopted policy will require that purchasers deliver 100 percent of the southern pine sawtimber purchased on set-aside sales to small business processing facilities, but the 70/30 rule will apply to all other coniferous species and to all hardwoods. For these, purchasers of set-aside sales may deliver up to 30 percent of the advertised sawtimber volume to large business processing facilities.

This policy assures delivery of set-aside volume to small business facilities, makes enforcement of requirements for processing of set-aside sale volume easier where southern pine species prevail, and yet provides marketing flexibility for hardwoods and other coniferous species.

Of the few who commented on enforcement provisions to ensure strict compliance with new manufacturing requirements, nearly all supported strong enforcement and prompt penalties for violations.

The Forest Service will work with SBA to develop enforcement through agency policy and small business qualification process. In addition, the Forest Service will examine contractual provisions which require reporting of log delivery and will develop appropriate measures to deal with violations.

G. Special Salvage Timber Sale Program (SSTS)

The current policy places undue restriction on the Special Salvage Timber Sale Program (SSTS). The proposed policy would have removed the 70/30 manufacturing requirement for sales set-aside under the special salvage program. Also, timber volume from this program would not have been included in calculations for the regular timber set-aside program.

Large business strongly supported the proposal to discontinue inclusion of the special salvage program with the regular set-aside program and to eliminate the 70/30 manufacturing requirement. Small businesses substantially supported the proposal. Comments against it cited the need to assure that small business facilities receive a meaningful supply of timber.

On February 15, 1985, following publication of the Forest Service proposed policy changes, the SBA published a final rule at 50 FR 6337 which eliminated the 70/30 manufacturing requirement for the special salvage program. The Forest Service will not include the SSTS program volume in its operation of the regular set-aside program or in recomputation of shares after the scheduled recomputation at the end of fiscal year 1985.

This policy permits maximum flexibility for small operators to market their products. It also eliminates recordkeeping for the recomputation process and operation of the 6-month set-aside program.

Impacts

This policy has been reviewed against the objectives and criteria of Executive Order 12291 and it has been determined that these changes in policy will not result in any of the economic or regulatory impacts associated with a major rule. The discretion available to the Secretary is in selecting administrative procedures to facilitate operation of the set-aside program. This change in policy will not have an annual effect on the economy of $100 million or more and will not result in a major increase in costs for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, and the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Moreover, this final policy would not have significant economic impact on a substantial number of small entities. The policy will continue to protect the interests of small business timber industry firms and to assure them of the opportunity to obtain a fair proportion of National Forest timber sales. The policy requires the use of existing reporting and inspection procedures and does not increase compliance or administrative costs of small entities.

This final policy will not significantly affect the environment. Therefore, an environmental impact statement has not been prepared. Furthermore, the final policy will not result in additional information collection requirements and, therefore, it has not been submitted for review under the regulations at 5 CFR Part 1320 which implement the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The policy revises procedural methods of conducting and administering the Small Business Timber Set-Aside Programs in response to a Forest Service-SBA Joint Review of the Small Business Timber sale Set-Aside Program which identified key procedures in the current program which needed revision in order to make the set-aside program operate more effectively. Substantial public involvement with associations representing both timber industry size groups, individuals from both large and small business firms, and from government entities helped shape the initial proposed changes. As noted above, substantial comments to the proposed changes published in the **Federal Register** have influenced the final policy. The final policy to be implemented has substantial support in the agency record, viewed as a whole, and full attention has been given to the comments of persons directly affected by the policy in particular. The revised program will set forth in a forthcoming revision of the Forest Service Manual.

Dated: January 27, 1986.

R. Max Peterson,

Chief.

EXHIBIT 1.—HANDLING OF CARRYOVER VOLUMES IN RECOMPUTING SHARES

Small business weighted average purchase and harvest percent causes	Small business harvest to purchase ratio of—	Result on share and carryover volume
1. Increase over current share which exceeds 5 share percentage points.	A. .90 ratio or more.	Adopt weighted average purchase and harvest percent. Drop surplus carryover.
	B. Less than .90 ratio.	Adopt weighted average purchase and harvest percent. Retain ½ surplus carryover.
2. Decrease from current share which exceeds 5 share percentage points.	A. .90 ratio or more.	Adopt weighted average purchase and harvest percent. Retain ½ deficit carryover.
	B. Less than .90 ratio.	Adopt weighted average purchase and harvest percent. Drop deficit carryover.
3. Increase or decrease from current share of 5 share percentage points or less.	A. .90 ratio or more.	Retain current share. Drop all carryover.
	B. Less than .90 ratio.	Retain current share: Retain ½ surplus carryover.

[FR Doc. 86-2245 Filed 1-31-86; 8:45 am]

BILLING CODE 3410-11-M

Federal Register

Monday
February 3, 1986

Part III

Department of Labor

Employment Standards Administration

20 CFR Parts 701, 702 and 703
Longshore and Harbor Workers' Compensation Act Amendments of 1984 and Related Statutes; Final Rule

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Parts 701, 702 and 703

Longshore and Harbor Workers' Compensation Act of 1984 and Related Statutes

AGENCY: Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: On January 3, 1985, the Department of Labor published Interim Final Rules (IFR) implementing the various provisions of The Longshore and Harbor Workers' Compensation Act Amendments of 1984 (Pub. L. 98–426, 98 Stat. 1639), and making certain technical corrections in the regulations as previously promulgated in 1973 and 1977 (50 FR 384). These were effective December 27, 1984.

The many substantive changes made by the 1984 Amendments include the exclusion from Longshore Act coverage of certain workers and a certification process for exempting from coverage certain small vessel facilities; provisions granting to the Secretary authority to exclude medical care providers and claimant representatives who have committed certain specified fraudulent activities; changes in procedures for the approval of settlements and in the application process for section 8(f) (second injury "Special Fund") relief; and new ways to deal with occupational disease claims and for hearing loss claims.

Because the 1984 Amendments provided that most of the statutory changes became effective either on the date of enactment (September 28, 1984) or ninety days thereafter, the rules were published as final subject to comment, as authorized under the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B) and 553(d)(3). The interim final regulations were to remain in effect (as extended 50 FR 39661 and 50 FR 53308) until February 3, 1986, unless extended. These final rules supercede those regulations and incorporate changes suggested by the comments received.

In addition to the changes in the interim final rules, this publication includes another change which is purely administrative in nature. The final rules at § 702.101 update the regulations to reflect changes made in 1980 to the organizational structure of the Office of Workers' Compensation Programs, which eliminated the Kansas City and Denver district offices. More specifically, section 39(b) of the Longshore Act, 33 U.S.C. 939(b), authorizes the Secretary of Labor to establish compensation districts as he deems advisable and necessary to ensure the proper administration of the Act. It has been determined that those states formerly served by Districts 11 and 12 should be transferred to the jurisdiction of Districts 10 and 14, respectively. This organizational change was designed, and has been made, to improve the administration of the Longshore Act and its extensions. All persons who had been serviced by Districts Numbered 11 and 12 have been informed of this change. Further, the changes made by this rule are not substantive but relate solely to agency organization and personnel matters. For that reason, the Department finds that, under 5 U.S.C. 553, notice and comment on the rule are unnecessary and that good cause exists to make the rule effective immediately upon publication.

EFFECTIVE DATE: These final rules shall be effective on January 31, 1986.

FOR FURTHER INFORMATION CONTACT: Richard A. Staufenberger, Deputy Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room S–3524, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 523–7503 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Interim Final Regulations (IFR) provided a period for submitting written comments which (with an extension) closed March 22, 1985. Seventy-eight comments were received during this period from a variety of interested sources including employers, insurance companies, industry representatives, lawyers who practice in this area of law, the Department of the Air Force, and a labor union.

Based on the comments received and the lessons derived from the experience of working with the IFR, a number of changes have been made. The final rule as published today sets forth only the changes made to various sections of the IFR. All other portions of the IFR are adopted as published at 50 CFR 391–407. Readers should refer to the January 3, 1985 issue of the **Federal Register** for the other sections of the regulations implementing the 1984 amendments to the Longshore Act.

Foremost among these are modifications in the Section 8(f)/second injury funds application process. Other changes involve § 701.301 (definitions), incorporating a definition of recreational vessel; §§ 702.171–702.175 (certification of exemption), revising the definition of "commercial"; and §§ 702.401–702.436 (medical care and debarment of physicians and medical care providers).

For the readers' convenience, each section of the IFR that is being amended is discussed in turn. The Longshore and Harbor Workers' Compensation Act (LHWCA or the Act) and the changes made by the 1984 Amendments (the Amendments) are discussed first, followed by a description of the IFR, a summary of the significant comments which addressed that particular point and the Department's response, and finally any changes in the final rules.

Scope of this Subchapter

The Interim Final Rules, at § 701.101, stated that these regulations (and by reference the 1984 Amendments) apply to the Longshore and Harbor Workers' Compensation Act (LHWCA) and its direct extensions, including the District of Columbia Workmen's Compensation Act of 1928 (DCCA, or the 1928 Act).

Several affected parties submitted comments asserting that the 1984 Amendments should have no application to cases that arose under the 1928 Act, which was "repealed" by the District of Columbia City Council in its own District of Columbia Workers' Compensation Act that became effective July 26, 1982 [the 1982 Act]. Further, some courts considering the question in the context of the 1984 Amendments' changes in the incidents of injured workers' tort rights have found the 1984 Amendments inapplicable to cases arising under the repealed 1928 Act. The subject is of immediate concern in continuing litigation and administration of many cases arising out of pre-1982 employment injuries. The Department has determined that all concerned parties and tribunals could benefit from a further statement of the Department's construction of the interrelationship between the 1928 Act, the 1982 Act, and the 1984 Amendments. These final rules state that construction: that the 1928 Act is to be treated as still in effect, for all purposes (including application of the current version of the LHWCA according to its terms), in cases in which the employment event or events on which the claim is predicated occurred before the new D.C. Act took effect.

Congress enacted the DCCA in 1928, in the exercise of its power to legislate generally for the District of Columbia. The DCCA provided simply that the Longshore and Harbor Workers' Compensation Act [LHWCA], enacted the previous year (44 Stat. 1424), "including all amendments that may hereafter be made thereto, shall apply" to private employment in the District. Pub. L. 419, 45 Stat. 600. In 1979,

pursuant to authority conferred by Congress in the District of Columbia Self-Government and Governmental Reorganization Act of 1973, D.C. Code sections 1–102 to –295 (1981), the District of Columbia City Council and Mayor enacted the District of Columbia Workers' Compensation Act, D.C. Law 3–77 (July 1, 1980), D.C. Code sections 36–301 to –344 (1981). After amendments extending its effective date, this act took effect on July 26, 1982. It contains no provision, other than that specifying its effective date, delimiting the class of cases to which it is applicable. It does contain a provision that the 1928 Act "is hereby repealed." *Id.* section 46, 27 D.C. Reg. 2503, 2541.

The local government and the United States Department of Labor, responsible for administration of the old law, were in full agreement that the new law did not disturb the operation of the old one with respect to pre-1982 cases, and the District of Columbia regulations promulgated under the new law limited its application to "injuries which occur on or after July 26, 1982." (Code of D.C. Reg. section 3602.1, 29 D.C. Reg. 5540 (Dec. 17, 1982)). No one then challenged the proposition that the 1928 Act was fully viable for purposes of applying the LHWCA to determine and enforce liabilities *continuing* to accrue for *post*-1982 medical services, disabilities, and survivorship related to injuries arising out of employment before the new law took effect. Such continued applicability of the 1928 Act was assumed and stated without analysis by both the District of Columbia Court of Appeals (*Garrett* v. *Washington Air Compressor Co.*, 466 A.2d 462, 462 n.1 (D.C. 1983); *Carey* v. *Crane Service Co.*, 457 A.2d 1102, 1103 n.2 (D.C. 1983)), and the federal Court of Appeals for the District of Columbia Circuit (*Crum* v. *General Adjustment Bureau*, 738 F.2 474, 475 n.2 (D.C. Cir. 1984); *Randall* v. *Comfort Control, Inc.*, 725 F.2d 791, 792 n.1 (D.C. Cir. 1984); *Stevenson* v. *Linens of the Week*, 688 F.2d 93, 95 n.1 (D.C. Cir. 1982)). Conversely, the local administrative authorities denied claims under the new law for post-1982 consequences of pre-1982 employment.

The LHWCA was amended on September 28, 1984. The Amendments have detailed effective-date provisons making many of their changes in the law applicable to future determinations of rights and liabilities based on *past* injuries and deaths, as well as those based on injuries occurring thereafter (*Id.* § 28, 98 Stat. 1655). The question whether these amendments to the LHWCA apply to liabilities under the 1928 Act has been presented in several contexts.

First, in *WMATA* v. *Johnson*, 104 S.Ct. 2827 (1984), the Supreme Court had interpreted sections 4(a), and 5(a) of the LHWCA as extending the tort immunity of an injured worker's employer to the "general contractor" to whom the immediate employer is a "subcontractor," under nearly all circumstances. Hence, the Washington Metropolitan Area Transit Authority (WMATA) was held immune to tort liability, based on its negligence, to injured employees of its subway-construction contractors. The cases that had been before the Supreme Court, many other pending tort suits against WMATA to which the *Johnson* ruling applied, and still more suits against other "general contractors" similarly situated, were still pending (final judgments not yet having been entered) when the LHWCA Amendments of 1984 were enacted. The plaintiffs immediately relied upon the amendments to sections 4(a) and 5(a), which were expressly made applicable to pending cases as well as new ones (1984 Amendments section 28(a), 98 Stat. 1655) and were expressly intended to preclude any still-pending cases from dismissal on the basis of the *Johnson* decision. (Conference Report, H.R. Rep. No. 98–1027, at 24 (1984)). In cases arising under the LHWCA itself, this position was readily sustained, and dismissals under *WMATA* v. *Johnson* were reversed on the basis of the 1984 Amendments. *E.g., Louviere* v. *Marathon Oil Co.*, 755 F.2d 428 (5th Cir. 1985). In cases under the old DCCA, however, WMATA and other defendants asserted, inter alia, that the 1984 LHWCA Amendments could have no operation under the "repealed" 1928 Act. Although at least one judge of the U.S. District Court for the District of Columbia had apparently held that the *Johnson* decision was no longer the applicable law, (*Leher* v. *AFGO Engineering Corp., Civ.* No 81–1593 (D.D.C. Oct. 10, 1984) (Gasch, J.) (unpublished order denying summary judgment for defendant), WMATA's position was accepted by Judge Pratt in *In re Metro Subway Accident Referral*, Misc. No. 82–306 (D.D.C. Dec. 18, 1984). The *Metro Subway* opinion "accept[ed] as a fact that the Congress in enacting the 1984 amendments intended the amendments to sections 4(a) and 5(a) of the [LHWCA] to apply to the District of Columbia and therefore to this litigation," but reasoned that "[t]he crucial question is not whether Congress possessed the power and had this intent, but whether the means it employed achieved this result." (*In re Metro Subway Accident Referral, supra*, Slip op. at 7). The court concluded that, "[h]aving been repealed, the 1928 Act could not be affected by amendments to the [LHWCA]," and that the effect of the general saving statute, 1 U.S.C. 109, is only to "preserve . . . accrued rights and liabilities" that "exist[ed] at the time of the repeal." This decision has been appealed to the District of Columbia Circuit, which also has the issue before it in other indistinguishable cases.

The IFR, at § 701.101(b), provided that the new regulations (and, by implication, the amendments they embodied) would apply to old DCCA cases. This assertion has been challenged in comments on the interim final regulations, submitted on behalf of WMATA, in reliance on the *Metro Subway Accident Referral* opinion.

The applicability of the 1984 Amendments to old-DCCA cases was presented again in tort litigation in *O'Connell* v. *Maryland Steel Erectors, Inc.*, 495 A.2d 1134 (D.C. 1985). *O'Connell* involved the viability of an injured worker's tort suit against a negligent third party, where the suit was filed more than six months after entry of a formal award of compensation. Before the 1984 Amendments, LHWCA § 33(b) provided that, perhaps subject to rare exceptions based on conflicts of interest, the worker's right to sue was irrevocably assigned to the employer six months after an award; under the 1984 Amendments, the right reverts to the employee if the employer does not exercise it within 90 days. The court generally followed the reasoning of the *Metro Subway* decision in holding that because the injury was covered by the old DCCA rather than the LHWCA itself, the amendment was wholly inapplicable. It reasoned that because of its repeal in 1982 by the new DCCA, the old DCCA "had ceased to exist" and "was no longer on the books" before 1984, so that the Amendments "did not affect any rights created by [the] prior law." 495 A.2d at 1142. The court denied any deference to the IFR at 701.101(b), on the ground that "provisions dealing with the jurisdiction of the courts are not within the province of an agency to interpret." *Id.* at 1144. And it determined that the 1984 Amendments were not "meant . . . to cover persons injured in purely land based occupations" and "affected only the maritime industry." *Id.*

Contrary to the reasoning *Metro Subway* and *O'Connell*, the proposition asserted in the IFR—that the LHWCA Amendments of 1984, insofar as they

apply in terms to "pending claims," apply to such claims under the old DCCA—is both sound and, as a practical matter, strictly necessary. The "general saving statute," 1 U.S.C. 109, not only preserves "liabilit[ies] incurred" under a repealed statute, but further provides that for purposes of determining and enforcing such liabilities the repealed statutes "shall be treated as still remaining in force." Hence, as to the preserved claims and liabilities, the 1928 Act is "still . . . in force." The terms of the statute that is thus preserved for the relevant class of rights and liabilities (the 1928 Act) expressly make the LHWCA *as amended* applicable; and the LHWCA, as currently amended, includes provisions added in 1984 which are expressly applicable to claims arising out of employment before 1982 as much as to those arising after 1984.

The contrary view expressed in *In re Metro Subway Accident Referral, supra,* and *O'Connell, supra,* would appear to have consequences far beyond the inapplicability of the 1984 LHWCA Amendments to rights and liabilities under the 1928 Act. The statement that the saving statute preserves only *"accrued* rights and liabilities" "existing at the time of the repeal," *In re Metro,* Slip op. at 10, would lead to legal and administrative chaos. The only rights and liabilities "accrued" under the 1928 Act as of July 26, 1982, were for medical services rendered by that date, disability or survivor status continuing to that date, attorneys' services performed up to that date, and special fund assessments made up to that date. Thus, if only such "accrued" liabilities and rights were preserved for enforcement after that date, there would be no basis for the *continuing* accrual of rights and liabilities under the 1928 Act after its repeal, even in circumstances where the *employment events* on which the rights and liabilities are based occurred before then.

The Department of Labor, like all relevant judicial tribunals, the local District of Columbia administrators, and indeed all insurers and self-insurers responsible for payments up to now under the old DCCA, *have certainly assumed the contrary*—i.e., that what is preserved under the old DCCA is all rights and liabilities, whenever "accruing," arising out of *employment* events before July 26, 1982. The future liabilities resulting from those events, though contingent in duration and amount on future events (and hence neither "accrued" nor "vested"), were, in the language of the general saving statute, "incurred" by the employers or insurers at the time of the employment events. *O'Connell*'s reasoning that the old DCCA "had ceased to exist" and "was no longer on the books" in 1984 is as inconsistent with the court's own application of the pre-1984 version of the LHWCA, through the 1928 Act, as it would be with application of the amended version. Pursuant to the general saving statute, the 1928 Act *remains in force* for all circumstances in which the employer's liabilities were "incurred" before its repeal, even if those liabilities had not yet accrued. The *O'Connell* court also erred in reasoning that Congress and the President intended the 1984 Amendments to apply only to maritime, not "purely land based," employment; even apart from the old DCCA, the Amendments certainly apply to entirely non-maritime employment through the other statutory extensions of the LHWCA (see 20 CFR 701.101(a)).

Since the rights and liabilities preserved by the general saving statute included liabilities that were not "accrued" or "vested," but were *contingent* (even though already "incurred"), the application of new legislation readjusting some of those liabilities upwards and others downwards is entirely valid. It is clear that the District of Columbia government's intent and understanding when it enacted and implemented the 1982 Act was that the 1928 Act would remain fully in effect with respect to past *and future* liabilities deriving from pre-1982 employment events. It is equally clear that when Congress passed the 1984 LHWCA Amendments, it intended to readjust and to rebalance the rights and liabilities in *all* cases in which the LHWCA was the measure of those rights and liabilities.

In sum, the reasoning of the opinions in *In re Metro Subway Accident Referral* and *O'Connell* is unsound and would have extremely unfortunate consequences. The question should not be characterized as whether a repealed statute can be amended, but whether an incorporating statute which remains in effect as to a class of cases should apply the incorporated statute according to the latter's current terms. The 1928 Act remains in effect pursuant to the general saving statute, so as to apply the *current* version of the LHWCA (where its terms so provide), to determine liabilities resulting from employment events before July 26, 1982.

The IFR stated that the 1928 Act applies to "injuries or deaths sustained prior to July 26, 1982," when the new local legislation superseding the 1928 Act took effect. 20 CFR 701.101(b), 50 FR 391. This statement is substantially revised for clarity.

First, when an "injury [is] sustained" is ambiguous, and to the extent it is the appropriate standard it is defined differently for these purposes than for others. For example, if a worker whose leg was injured at work in 1980 falls while at home, because of the impaired leg, in 1984, that injury is "consequential" to the 1980 injury, and its consequences and sequellae are compensable based on their relationship to the earlier injury; yet the compensable consequential injury was "sustained" in 1984. It is not compensable under the new local legislation, and must reasonably be compensable under the old law. Further, the "injury" represented by an occupational disease is not considered for other purposes to "occur," or to be "sustained," until it causes symptoms; but for the purpose of determining whether a workers' compensation statute *applies* to such an injury ("coverage"), the relevant legal provisions are those in effect at the time of the *employment exposure* to the conditions that cause the disease. Finally, coverage of a *death* claim does not turn on when "death [is] sustained." The LHWCA itself, for example, until its shoreward extension in 1972, covered only employment afloat; it was never applied to cases of death *after* the 1972 amendments, related to employment events *before* 1972 in *shoreside* longshoring or shipyard work. See generally *Stark* v. *Bethlehem Steel Corp.*, 10 BRBS 350, 353–354 (1979); *Verderane* v. *Jacksonville Shipyards, Inc.*, 14 BRBS 220.15, 223–224 (1981); *id.* at 228 (concurrence); *id.* at 231 (dissent). Similarly, a death in 1985 resulting from a 1981 employment injury will not be within the coverage of the local DCCA that took effect in 1982, any more than an occupational disease, becoming manifest in 1985, arising out of employment exposure before 1982.

Workers' compensation laws operate upon the employment relationship. The occurrence of an event or events in the course of that relationship is the foundation of any compensation-law liabilities that arise thereafter. The insurance requirement that is a socially and practically critical aspect of compensation legislation attaches to the *conduct* of *covered employment.* The strictly standardized form of compensation insurance policy defines the liabilities covered by a policy for a specified term, as all those arising out of *employment* during the policy's term, regardless of when the liabilities arise. Hence a policy issued to a District of

Columbia employer under the 1928 Act for the year 1981 will cover the employer's liability, *under the old law* (including any statutory amendments to that law that are applicable to the case), for a 1985 death related to *employment* in 1981; but the employer's 1985 insurance policy (if the employer is still in business), under the new law, will not include such liability.

Thus, highly unsettling consequences would follow if the distinction between 1928-Act and 1982-Act cases were different from the distinction between what is covered under old-DCCA insurance policies and what is covered on new-DCCA policies. Insurers would be relieved of liabilities they contracted to bear, and either some cases that would otherwise be compensable would not be or the liabilities in those cases, if under the 1982 Act, would be uninsured and would fall on the employers themselves even though they were continuously insured under one law or the other.

The courts that have included footnotes in their opinions explaining their continued application of the old DCCA in the cases before them after its repeal have stated a variety of bases—that "events in this case occurred prior to the passage of" the 1982 Act, (*Carey* v. *Crane Service Co.*, 457 A.2d 1102, 1103 n.2 (D.C 1983) (employee's tort suit)), or that "all of the pertinent events occurred bofore [its] effective date," (*Garrett* v. *Washington Air Compressor Co.*, 466 A.2d 462, 462 n.1 (D.C. 1983)(same)), or that the "injury and claim occurred" before repeal, (*Stevenson* v. *Linens of the Week*, 688 F.2d 93, 95 n.1 (D.C. Cir. 1982) (review of old-DCCA award)) or that the "claim arose before the enactment" of the repeal, (*Crum* v. *General Adjustment Bureau*, 738 F.2d 474, 475 n.2 (D.C. Cir. 1984) (same)), or that "the claim was filed before the effective date" of the repeal. (*Carter* v. *Director, OWCP*, 751 F.2d 1398, 1399 n.1 (D.C. Cir. 1985) (same)). None of these statements was the result of consideration and resolution of a disagreement between the parties, nor would the different standard here promulgated have changed the results. It is appropriate to preserve the applicability of the 1928 Act for *all* liabilities arising out of *employment* before its repeal. The general saving statute, 1 U.S.C. 109, may be seen to support this analysis. It preserves any "liability incurred" under a statute before its repeal. The liability of an employer under a workers' compensation statute is "incurred" at the time of its conduct of the employment out of which a disabling injury arises, even though such liability may not even begin to *accrue* until later.

ALJ decisions issued under the 1928 Act, as well as decisions issued by the District of Columbia under the 1982 Act, have concluded that disabilities resulting from employment events that occured prior to July 26, 1982, are subject to the provisions of the 1928 Act even though such disabilities did not become mannifest until after the 1982 Act became effective. *Coward* v. *Peter Kiewit & Sons, Inc.*, OALJ Nos. 85–DCW–38 to –40 (Aug. 30, 1985) (1928 Act); *Pryor* v. *James McHugh Construction Co.*, OALJ No. 85–LHC–114 (Sept. 9, 1985) (1928 Act); *Jones* v. *PEPCO*, H&AS No. 83–182 (Oct. 23, 1985) (1982 Act).

Accordingly, these final rules revise § 701.101(b) to state that the old law applies, not to "injuries or deaths sustanied" before its repeal, but to "all claims based on *employment events* before July 26, 1982."

Definition and Coverage

The 1984 Amendments changed the Act's coverage in two significant ways: by specifically excluding certain categories of workers' from coverage, and by providing that certain facilities which work on small vessels (as defined) may be certified as exempt from coverage. Both are dependent on coverage of the worker under a state workers' compensation law. The IFR incorporated those changes, providing where possible definitions of the terms used in the statute and establishing a procedure for certifying small vessel facilities. A number of comments were received on these portions of the IFR.

One commentator objected to that section of the IFR which excluded "longshore cargo checkers and cargo clerks" from the definition of "individuals employed exclusively to perform office clerical, secretarial, security, or data processing work" (20 CFR 701.301(a)(12)(iii)(A)). The commentator contended that such exclusion constituted an expansion of coverage beyond that which existed prior to the amendments. The Department does not agree. First, the legislative history of the 1972 Longshore amendments clearly states that "checkers, for example, who are directly involved in the loading or unloading functions are covered by the new amendment." S. Rpt. No. 92–1125, 92D Cong. 2d Sess., 13 (1972); H. Rpt. No. 92–1441, 92D Cong. 2d Sess., 11 (1972). The Supreme Court sustained this position in *Northeast Marine Terminal Co.* v. *Caputo*, 432 U.S. 249, 271 (1977). More importantly, the Conference Managers Statement specifically states with regard to the 1984 Amendments that "cargo checkers and clerks remain fully within Longshore Act jurisdiction." H. Rpt. 98–1027, 98th Cong. 2d Sess., 23 (1984). See also Statement of Congressman George Miller, 130 Cong. Rec. H9731 (Daily ed. September 18, 1984). Because Congress expressly stated its intent to include within the coverage of the Act employees classified as longshore cargo checkers and clerks as well as other individuals performing tasks related to cargo movement, no change has been made to § 701.301(a)(12)(iii)(A) of the regulations.

Recreation

The Amendments remove from coverage those workers engaged in the building, repair or dismantling of recreational vessels under sixty-five feet and those employed by a "recreational operation", but does not define the term "recreational." In the preamble to the IFR, the Department specifically invited comments suggesting definitions for this term; thirteen were received. Each comment recommended that the Department should adopt the definition of "recreational vessel" set forth at 46 U.S.C. 2101 (25): "recreational vessel means a vessel: (A) Manufactured or operated primarily for pleasure, or (B) leased, rented, or chartered to another for the latter's pleasure." It was also recommended that the definition of "recreational operation" should be expanded to include activities conducted for the personal pleasure of the individuals involved. The Department accepts these suggestions and has amended § 701.301(a)(12)(iii) (B) and (F) to reflect these changes.

Marina

Among the categories of workers excluded from the Act's coverage are marina employees (except for those building, repairing or dismantling the structure). Comments related to the term marina employees in the IFR urged the Department to define "marina" and to specify which marina employees would be excluded from coverage.

The legislative history provides no guidance and research provided no definition of marina in other statutes which might be adopted.

Given this lack of guidance, the Department has not defined the term in the final rules, nor has it specified which employees may be included under this exclusion. The Department's position is that every employee of a marina (except those specifically excluded from the term in the statute) would be excluded from coverage.

One commentator questioned why the Department's IFR used the phrase "whether or not over the navigable waters of the United States" only with regard to the exclusion of individuals employed by a club, camp, recreational operation, restaurant, museum or retail outlet (§ 701.301(a)(12)(iii)(B)). Such usage, the comment noted, implied that the exclusion set forth in section 2(3) (A), (C), (D), (E) and (F) of the Act would not apply to persons injured while working over water. Further review of the statue and its legislative history support the view that the phrase in question applies to all excluded groups. In explaining the scope of section 2(a) of P.L. 98–426 which amended Section 2(3) of the Longshore Act, Congressman John N. Erlenborn said:

> The consensus among the conferees was to reaffirm the purposes of the 1972 jurisdictional changes, and in that light, the substitute narrowed its focus to certain fairly identifiable employers and employees who, although by circumstances happened to work on or adjacent to navigable waters, lack a sufficient nexus to maritime navigation and commerce.

130 Cong. Rec. H9733 (Daily ed. September 18, 1984).

To correct this oversight and to eliminate any possible confusion on this point § 701.301(a)(12(iii) has been amended to include the phrase quoted above so that it applies to all subsections and not merely to subsection (B).

Small Vessel Certification

The Amendments exempted from coverage those facilities certified by the Secretary to be engaged in building, repairing, or dismantling exclusively small vessels as defined. The definition of small vessels includes only commercial barges under 900 lightship displacement tons, and commercial tugboats, towboats, crewboats, supply boats, fishing vessels "or other work vessels" under 1600 tons gross. Two comments addressed this subject which has been revised in the final rules.

In § 702.172(a)(2) of the IFR the Department excluded from the definitions of commercial vessels "military supply boats, patrol boats, utility vessels, ferries, Corps of Engineers dredges, pressure barges or Coast Guard vessels." Two commentators suggested that most of these vessels qualified as "small vessels" within the meaning of section 3(d) of the amended Act and recommended that the regulations be changed accordingly.

The Department agrees and the definition of "commercial" has been modified to exclude from the term only military and Coast Guard vessels. Although the same commentators also maintained that military supply vessels should be included within the definition of small vessels, a review of the legislative history convinces the Department that—except for Army Corps of Engineers Dredges—military vessels of whatever nature are excluded from the term "commercial" vessels.

Certification Process

The IFR at §§ 702.171–702.175 describe the certification process through which a facility can gain exemption from coverage. Two points of clarification were suggested in the comments and experience has pointed out the need for additional clarification; corresponding changes have been made in the final rules.

Section 702.175(a) of the IFR provides examples of when the exemption granted under section 3(d) of the Longshore Act will terminate when the exempted facility engages in the repair of a non-small vessel or enters into a contract containing provision for a Federal maritime subsidy. No guidance was given, however, as to when the exemption would terminate should the facility agree to build a non-small vessel. Section 702.175(a) has been amended to provide that the exemption would cease to apply when the construction first takes on the characteristics of a vessel, that is, when the keel is laid. See 129 Cong. Rec. S8661 (Daily ed. June 16, 1983).

Another comment suggested that the requirement at § 702.174(d)(2) for posting a notice "along" those areas of an exempted facility which are over navigable waters, or upon any adjoining pier, wharf, dock, facility over land for launching vessels or for hauling, lifting or drydocking vessels (and are thus not exempt from coverage) be modified to read "at" the entrance, in order to avoid an unnecessarily burdensome posting requirement. That suggestion has been incorporated in the final rules.

Another comment suggested that § 702.174, which requires that a description of the facility be filed as part of the application, should specifically require a site plan or aerial photograph. Most applicants under the IFR have met the description requirement through submission of just such material and therefore the Department has concluded that such a change is not only proper but that it would not add any additional burden on those facilities seeking certificates of exemption; § 702.174 has therefore been revised to require the submission of a site plan or aerial photograph.

Coverage Under State Workers' Compensation Laws

Both the exclusion from the definition of employee and the small vessel certification exemption provisions of the Amendments are contingent on coverage under a state workers' compensation program. Several commentators pointed to a potential conflict with state laws which require a claimant first to file under any Federal law which might provide coverage. The commentators suggested such state law provisions could void the new exclusions from coverage intended by Congress in enacting the 1984 Amendments. They suggested that the regulations overrule such state laws.

The Department recognized that a conflict with State laws may arise and in § 701.401 set forth its position that any such law should not be used to avoid the changes in coverage made by the 1984 Amendments. *See* Discussion at 50 FR 386. Thus, the statute itself requires an employee who falls within one of the categories of workers' excluded from coverage of the Act, to first file under a State workers' compensation program. Only if the individual is specifically excluded from coverage under the State law would such individual retain rights under the Longshore Act. No changes have been made in this section of the IFR, in part, because experience has not demonstrated that further clarification is necessary or appropriate.

Subpart B—Claims Procedures

The Amendments made several changes in the notice and filing provisions of the Act (e.g., Sections 12 and 13, Longshore Act), which generally require that a notice of injury be filed within thirty days and the claim within one year of the date of injury. For occupational diseases, however, the Amendments provide those time limitations are one-year and two-years, respectively, and further define when an "injury" occurs.

In addition to changes in the time frames for submission of notice and claim, the Amendments call for designating a particular individual to whom the notice is to be given ("designated official"). Finally the Amendments provide that when no time is lost from work because of an injury, the employer is required only to keep a record of the injury but need not submit notice to the deputy commissioner. The IFR reflect these changes in the time limits and establish the procedure for designating an official. Comments on those subjects addressed several topics:

Designated Official

The Amendments provide that each employer designate an official to receive notice and claims. This official (in the language of the Amendments) must be a first line supervisor, local plant manager or personnel office official. The IFR (at § 702.211(b)(1)) described the type of individual who may be designated, consistent with the positions described in the Amendments; following the language of the Amendments, they called for "an individual" to be designated. They also noted that where an individual has not been properly designated, the time limitations might not be used as a defense, and that, for retirees, notice might be filed with any officer or person in charge of the business, whether or not an official had been designated.

One comment urged the Department to broaden the categories of individuals (first line supervisors, local plant managers or personnel office official) who may be designated, to include such individuals as the health facility nurse.

The Department notes the language of the statute specifically identifies the categories of individuals from which the designee "shall" be selected. The legislative history shows that this provision was included to ensure that an injured employee not be excluded from benefits because he/she failed to provide notice to the appropriate person when that person was obscure or at a distant location. The purpose was to make it easier for the employee to meet the notice requirement, not more difficult. Accordingly, longstanding customs should not be changed and the provisions at § 702.211(b)(1) have been broadened to allow other individuals to be designated.

Another comment also suggested that the regulations permit more than one individual to be designated at a facility which is so large that reporting only to one individual might be difficult. The final rules remove the word "an" and allow the designation or more than one individual, at the discretion of the employer. The Department expects that this multiple designation would only be where the size of the facility required it, and notes that the identity of all designated officials must be posted.

Filing a Claim for Occupational Disease: Sections 702.212(b) and 702.222(c) of the IFR provided that if the claim is for an occupational disease, both the notice and claim time limitation provisions did "not begin to run until the employee is disabled, or in the case of a retired employee, until a permanent impairment exists." Commentators objected to this provisions, stating there was no statutory authority for distinguishing occupational diseases from any other claim.

In making this distinction, the IFR reflect the language of the Amendments, which provide that the date of injury in occupational disease cases is the date the claimant becomes aware of the relationship between the employment, the disease and the death or disability. The Amendments for the first time provide a separate definition of disability for retired employees (section 2(10) ". . . such term shall mean permanent impairment . . ."). For those who are not retired the Amendments require that the date of injury begins only when there is a disability; until there is a disability to connect to the employment, there is no injury and the time limitation provisions do not begin to run. The regulations remain unchanged.

No Lost Time Cases: Section 30(a) of the Act was amended to provide that a report of injury need not be submitted by the employer where the injury does not result in time lost from work. This change is reflected in the IFR at § 702.201. The regulations specify which type of record to keep (§ 702.202) and for how long these must be retained (§ 702.111). One comment requested clarification on the record keeping requirement, noting that records of injury for LHWCA claims also served to meet the record keeping requirements of the Occupational Safety and Health Act (OSHA). The comment indicated that the information required by the Act (§ 702.202) and OSHA, did not coincide. To clarify, § 702.201(b) has been revised to provide that compliance with OSHA injury report record keeping requirements would satisfy the record keeping requirements for no-lost-time injuries under LHWCA.

Another comment on the no lost time reporting requirement concerned its affect on the running of the time limitation provisions under sections 12 and 13 of the Act (§§ 702.211 and 702.221). The commentator requested clarification on when the limitations period would begin in those cases where there is no immediate compensable disability. Section 30(a) of the Longshore Act requires covered employers to file reports only where the injury "causes loss of one or more shifts of work." Thus, where an injury does not result in lost time, the employer is not under a duty to file a report with the Secretary. In such cases (e.g., no lost time) the filing of a report cannot cause the time within which a claim must be filed (Act section 13) to commence. This conclusion is premised on the fact that: (1) Congress recognized that an employee could not be "injured" until he or she suffered an impairment (either presumed or actual) to that person's earning capacity, and (2) Congress deemed that, in the absence of such impairment or loss, no report should be required from the employer. *See* generally *Marathon Oil Co.* v. *Lundsford*, 733 F. 2d 1139 (5th Cir., 1984); *Bath Iron Works Corp.*, v. *Galen*, 605 F. 2d 583 (1st Cir. 1979). Because no report is required by section 30(a) in no lost time cases, the filing of such reports cannot be deemed to start the statute of limitations within which the employee must file a claim. It is the Department's further position that no report should be filed with the OWCP district office in no lost time cases.

General Notice Provisions: Other issues concerning the notice and claim provisions of the IFR included:

—The elimination of the requirement that the claimant deliver a notice of injury to the deputy commissioner. Because few notices are actually delivered to the deputy commissioner, the IFR changed the old wording from "shall" to "may", since it more accurately reflected existing practice. Several commentators questioned whether the Department could do away with the statutory requirement. The statute also gives the deputy commissioner authority to waive this requirement. Since this provision represents merely a formalization of a longstanding practice, the regulations remain unchanged on this point.

—The employee may provide notice of an injury orally, under the IFR. Some commentators suggested the deputy commissioner make a record of all oral notices received. This practice will be required through Department procedures.

—The IFR (at § 702.216) failed to reflect accurately the statutory changes effected by the Amendments to section 12(d) of the Act. The final rules provide, as the statute now does, that a claim will not be barred by untimely notice if *either* the employer had knowledge of the assertedly work-related injury within the applicable notice period *or*, despite the absence of timely notice or knowledge, the employer or carrier was not prejudiced by the delay beyond the applicable period.

Settlements

The settlement provisions of the IFR were the subject of twenty-eight comments. Most objected to the settlement provisions of the IFR as going beyond the intent of Congress.

The 1984 Amendments amended section 8(i) of the Act in several important respects. While it retained the requirement that settlements under the Act must be approved by the deputy commissioner or administrative law judge, the Amendments altered the basis for review, requiring that the settlement application be approved unless it was found to be "inadequate or procured by duress"; it imposed a thirty-day time limitation period within which the application must be acted on, and provided that where the parties are represented by attorneys, approval was automatic unless specifically disapproved within thirty days; settlement of medical and/or death claims was allowed; and it eliminated the commutation provision under section 14(j) of the Act.

The IFR, at §§ 702.241–702.245, established procedures for implementing these changes. These clarified that the thirty-day period for approval of settlement applications does not begin to run until the adjudicator (meaning the ALJ or deputy commissioner) receives a completed application and that where the claim was pending at the OALJ, that the time does not begin until five days before the hearing is scheduled, so as to ensure that the case is assigned to a judge and the application will be reviewed.

At § 702.242, the information necessary for a complete settlement application was described; included was a requirement for personal information on the claimant's education and skills, an explanation as to why the settlement amount is adequate, and a current medical report. While the IFR did not define adequate in most situations, they provided that for cases where compensation is being paid under an order and there are no outstanding issues, a settlement amount which does not equal the present value of future compensation payments commuted at a discount rate (for which comments were invited), would be considered inadequate unless shown to be adequate.

The comments received addressed a variety of issues concerning the settlement provisions. Many commentators considered the provisions to be contrary to the intent of Congress which limited the basis for denial of settlements and required action on a settlement application within thirty days. In addition, several commentators stated that the provisions denying the right to settle survivors claims prior to the employee's death were inconsistent with the statute. These comments and the response are discussed in turn below.

Information Required in the Settlement Application: The IFR at § 702.242, describe the information necessary for a complete settlement application. A number of objections to this provision were received.

First, a number of comments asserted that the amount of information required was burdensome and that the requirement would complicate, not simplify, the settlement process as Congress had intended. Some noted that much of the information required was already a part of the case record and the applicant should not be required to duplicate the information. Others objected to the provisions in §§ 702.242(b) (5) and (6), which required a "current medical report" and "an estimate of the cost of future medical treatment", respectively.

The information required by § 702.242(b) remains essentially the same in the final rules. While Congress narrowed the basis for evaluating a settlement application and imposed a time frame within which to take action, it retained the requirement that the deputy commissioner or administrative law judge approve the settlement. The information required in the settlement application is essential for the proper evaluation of the terms of the settlement, and is based on those factors which are considered essential in evaluating the settlement, as described by the Benefits Review Board (BRB) in *Clefsted* v. *Perini North River Associates*, 9 BRBS 217 (1978). However, the Department agrees with one commentator who suggested that the adjudicator should not be required to evaluate the "probability of success" before ruling on the application. This element, the Department agrees, is very difficult to evaluate and therefore should not be a separate factor to consider. Section 702.243(f) has been amended to delete this as a separate criterion to be evaluated. However, it is a circumstance which the adjudicator may consider in deciding whether the settlement should be approved.

The application requirements as established in the IFR are not only essential to the approval process, but have not proven to be burdensome. As many of the comments pointed out, much of the information is already in the case record, presumably submitted by the parties seeking the settlement. Moreover, experience in the past year has revealed no significant difficulties incurred by the parties in obtaining the required information.

Several comments suggested that § 702.243(g) be deleted because it was inconsistent with the 1984 amendments which repealed section 14(j) of the Act. The Department does not agree. Rather, the Department has determined that § 702.243(g) provides a sound annuity basis for determining the adequacy of settlements in those cases where benefits are being paid pursuant to a final compensation order and there are no substantive issues in dispute between the parties. This conclusion is consistent with the statement of Professor Larson in his treatise on workers' compensation wherein he noted that:

> [1] lump-sum settlements, when they are authorized by statute, are not compromises in the usual sense; that is, they do not assume concessions and adjustments in the amount of payment because of the existence of a disputed issue. Rather, they are essential commutations, and should be calculated on a sound annuity basis in accordance with any statutory rules provided. Larson, The Law of Workmen's Compensation, Vol. 3 section 82.71, p. 15–590–1. (Footnotes omitted).

In response to the Department's request many comments were received concerning the discount rate to the applied under § 702.243(g). The comments uniformly objected to the 5 per centum true discount rate set forth in the IFR. A more reasonable, and therefore acceptable, rate, some commentators suggested, was the interest rate provided for in section 302(f) of the The Federal Courts Improvement Act of 1982, Pub. L. 97–164, 96 Stat. 55. The Department agrees and has revised § 702.243(g) to require a discount rate identical to the rate specified at 28 U.S.C. 1961.

Many comments objected to the provisions of § 702.241(g) which prohibit parties to a disability claim from settling potential future survivors' claims at the same time they settle the employee's claim. The statute itself states that only "the parties to [a] claim for compensation" may agree to settle the claims. Since a claim for survivor benefits does not arise until the employee's death, there is no claim that can be settled. Therefore, under no circumstances may a person seeking benefits under section 7 or 8 of the Act settle a claim for survivor benefits which may be filed under section 9 of the Act.

While the settlement application requirements have remained essentially the same, certain modifications have been made in response to the comments and on the basis of experience. In addition, to ensure that information is required only where it is necessary to

properly evaluate the application, the Department is establishing procedures which allow deputy commissioners and ALJs flexibility in determining exactly what information is required in each case. Moreover, § 702.242(b)(5) has been changed to clarify that a new medical report is not always required; where permanency was established prior to the settlement, a report made at that time might meet the requirement. This avoids the unnecessary expense of a medical examination in cases where reports on file or in existence are adequate.

Several comments objected to that portion of § 702.243(a) which provides that the failure to submit a complete settlement application shall toll the thirty date period set forth in section 8(i) of the Act, 33 U.S.C. 908(i). The Department believes that this provision is both reasonable and necessary to ensure that the deputy commissioner or administrative law judge can properly evaluate the proposed settlement agreement in light of the statutory criteria. Without this limitation a settlement could be deemed approved without appropriate review, a result contrary to the Congressional directive that settlement proposals must be submitted to the Department for its evaluation and approval or disapproval.

Special Fund/Second Injury Cases

The special fund was established by section 44 of the Act to pay certain costs which are to be shared by the industry in general. Foremost among these is under section 8(f), which, under certain circumstances, limits to 104 weeks the liability of an employer/carrier in cases involving a second injury to a previously partially disabled employee. Section 8(f) was designed to discourage employers from discrimination in the hiring or retention of handicapped employees. As administrator of the fund, the Director, OWCP, is responsible for monitoring the fund and defending it against improper applications for relief.

The fund comes from an annual assessment, which prior to the 1984 Amendments was based on the amount of compensation and medical costs paid during the preceding year. Also, prior to the Amendments, an employer could apply for section 8(f) relief either at the deputy commissioner level or at the first hearing conducted by an ALJ. In the 1984 Amendments, Congress made two significant changes relating to the fund and to section 8(f) in particular. First, the assessment formula was modified, and second, the employer was required to raise the issue of special fund relief before the deputy commissioner. The IFR, at § 702.146 reflected the change in the assessment formula, and at § 702.321 established procedures for determining the applicability of section 8(f). Both were the subject of a significant number of comments and have been modified in response to those comments.

Assessment Formula

A number of comments expressed concern that the assessment formula still included the amount paid for medical benefits. These commentators pointed out that Congress changed the wording of the statute to delete the reference to medical payments and that continued inclusion of medical benefits in the assessment formula was inconsistent with the amended Act. Further review of the statute and the legislative history established that although section 44(c)(2) of the 1972 Longshore Act did require that the assessment be based on the "total compensation and medical payments made . . . by each carrier and self-insurer", the 1984 amendments (Pub. L. 98–426 § 24(a)) deleted the reference to medical payments. Under section 44(c)(2) as amended, the assessment is now dependent only on the compensation payments made during the preceding calendar year. Because "compensation" as defined in section 2 (12) of the Act does not include medical benefits, the Department now agrees that the formula set forth in the IFR should be changed. Accordingly, § 702.146(c) has been revised to delete the reference to medical payments. It should be noted, however, that this change will be applied only to assessments levied after publication of this final rule.

Section 8(f) and the Application Process

The requirement, at § 702.321, that a fully documented application must accompany the request for Section 8(f) relief brought more comments than any other section of the IFR. The 1984 Amendments for the first time required that all requests for section 8(f) relief, together with a statement documenting the employer's entitlement to such relief, must be presented first to the deputy commissioner before the request may be considered. Failure to present the request at that level operates as an absolute bar to relief, unless the employer/carrier could not have reasonably anticipated that sectioin 8(f) would be an issue.

The IFR at § 702.321, set out the procedures for determining the applicability of section 8(f), established when the request must be made, detailed what information must be contained in the application and set time limitations within which the request and the documentation must be submitted (90 days from the date when permanency first becomes an issue but no later than the informal conference).

Over thirty comments addressed this issue; some raised concerns with various aspects of the application process such as the ninety-day time requirement. Others asserted that the rules requiring a fully documented application and a recommendation by the deputy commissioner on the 8(f) request go beyond both the intent of Congress and the letter of the Amendments. These commentators maintained that the 1984 Amendments require only that the issue be raised before the deputy commissioner and do not require the submission of supporting documentation nor a decision on the issue by the deputy commissioner.

In drafting the IFR, the Department carefully considered the legislative history of the Amendments, which shows that this requirement in section 8(f)(3) is one of several changes made in order to stem the growing liability of the special fund. These concerns of Congress are amply illustrated by the legislative history; indeed the Senate version of the bill (which required the application to be raised before the ALJ) called for a fund conservator to represent the special fund. Senator Hatch described this provision as a response to the "growing liability" of the fund, 128 Cong. Rec. S9207 (Daily ed. July 27, 1982), which Senator Nickles noted was "not adequately protected and is being raided by questionable claims" 128 Cong. Rec. S9210.

While the conservator provision was dropped in Conference, similar concerns motivated the House version of the bill, which was eventually accepted by both houses. The House Labor Committee report explained that:

> The Committee further amended section 8(f) by requiring that employer's petitions for Special Fund relief be filed as soon in the claims adjudication process as possible, and that the Secretary be noticed with respect to any such petitions. The Committee believes that the Secretary has an obligation to safeguard the Special Fund, which should be met in connection with the adjudication of the claims.

H. Rept. No. 98–570, 98th Cong. 1st Sess., 10 (November 18, 1983).

Congressman Erlenborn noted that "no one guards the fund . . . [t]he result is that employers and claimants can stipulate fund coverage and often no one questions that factual claims." 130 Cong. Rec. H2488 (Daily ed. April 9, 1984).

Finally, the Conference Managers' report noted that the provision in section 8(f)(3) was intended

to encourage employers to raise the special fund issue early in the claims adjudication process, in order to assure the deputy commissioner and the Director of OWCP the opportunity to examine the validity of the employer's basis for seeking special fund relief.

H. Rept. 98–1027, 98th Cong., 2d Sess. 31 (September 14, 1984).

Congressional intent is clear: to end the practice of first raising the section 8(f) issue at the ALJ level, where it could often go unnoticed and uncontested, and to provide the deputy commissioner with an opportunity to "examine the validity of the" request to identify cases eligible for special fund relief and to defend against cases where necessary. The comments objecting to the requirement for a fully documented application are not supported by the legislative history, and this principle which is the basis of the final rules remains in tact.

In addition, experience over the last year in working with the interim rules does not support the contention that the requirement for a fully documented application is burdensome. This experience shows that employers have been able to meet this requirement, and have not encountered problems in obtaining the necessary documentation, even where other issues are outstanding on which the final decision for section 8(f) relief is dependent. Requiring the employer to document its entitlement, even where permanency or basic liability is contested, means merely that the employer must argue in the alternative, a practice which is nothing new to those who practice in this area of law. *See Verderane* v. *Jacksonville Shipyards, Inc.*, 772 F. 2d 775 (11th Cir. 1985).

Although the final rules retain the provision for submission of a fully documented application, that part of § 702.321(a) which describes the evidence required has been clarified. The modifications stem from experience during the interim period which showed a need to clarify further the nature of the required information. Accordingly, the final rules contain a more detailed description of the necessary documentation; although described in more detail, the modifications do not add to the information which is required.

Commentators also objected to having the issue adjudicated by the deputy commissioner. They argue that the Amendments require only that the deputy commissioner be put on notice that relief would be sought, not that it should be adjudicated at that level. Many commentators pointed out that other issues going to the basis of liability remain outstanding at that level and argue that an application for special fund relief may be premature. These objections, too, are without merit.

The IFR require that the deputy commissioner consider the request for relief and include in the recommended decision a finding on all outstanding issues. This provision (which many commentators described as adjudication) is not new, but merely describes the longstanding practice by which the deputy commissioner's recommended decision addresses all issues, including a request for section 8(f) relief. The IFR do not change the role of the deputy commissioner, although the Amendments, by requiring that special fund relief be raised first before the deputy commissioner, may add to the frequency with which the issue needs to be addressed.

While the provisions requiring submission of a fully documented application and consideration of the request for special fund relief have been retained, the rules which detail the time frames for submission of the application and other factors in the process have been substantially revised in response to comments. Many comments objected to the 90-day period for submission of the documented application, noted the difficulty of obtaining essential documentation where the employee would not cooperate, and sought clarification of the nature of the absolute defense. The changes in the final rules concerning these issues are discussed in turn below:

Time Frames

A principal objection to the application process is that provision in §702.321(b) requiring submission of the fully documented application within ninety (90) days of the date when either: (1) The informal conference is held where permanency of the claimant's condition is at issue; or (2) benefits are first paid for permanent disability. Both the length of time (90 days) and the events which start the time running were confusing in practice and have been substantially modified.

When time begins

A number of comments described the 90-day period as inadequate and described the process as confusing. Among the concerns were:

- Some commentators described possible hardship to claimants resulting from the procedure. These comments suggested that in order to avoid starting th 90-day period when permanency becomes an issue, employers might prematurely terminate benefits for temporary disability which they previously might have continued to pay during the dispute process.
- The IFR seem contradictory, since the employer was given 90 days to submit an application, but not later than the date of the informal conference at which permanency was at issue. If permanency was not raised until the conference, many comments expressed concern that the employer, caught by surprise and unprepared, would lose the right to seek section 8(f) relief.
- Claimants who were not beng paid would face additional hardship where the case was not transmitted to the OALJ because the employer took the full 90 days to submit its section 8(f) application.
- A number of commentators considered the 90-day period to be insufficient for gathering the required documentation. Several commentators noted that, where the claimant did not cooperate, it would be impossible to obtain the evidence required for the completed application, since the deputy commissioner is without authority to order depositions.

The commentators suggested alternatives to the IFR process. Some urged the elimination of the 90-day period; others suggested that in order to avoid delaying the formal hearing process, the case should be transmitted to the OALJ while the section 8(f) documentation was being compiled, after which the section 8(f) issue would be presented to and considered by the deputy commissioner and later submitted to the OALJ along with the rest of the case; still other comments suggested bifurcating the hearing process by allowing the case to go before the OALJ for consideration of all other issues and then remanding it to the deputy commissioner for a determination on section 8(f). One group of comments suggested requiring the issue be raised within 14 days f receipt of the conference memorandum recommending permanent disability, with all supporting evidence to be submitted within 90 days thereafter.

While the Department recognizes the time frames established in the IFR create potential difficulties, the suggested changes do not present viable alternatives. The suggestions that the case be transmitted to the OALJ while the deputy commissioner considers the section 8(f) issue is contrary to the statutory scheme established by Congress—once the case is transmitted to the OALJ, the Director, OWCP, as administrator of the special fund, loses jurisdiction over the claim and cannot consider, other than as a party, any issues in the case, nor make a

recommendation. Bifurcating the process would add additional and unnecessary workload to the hearing process and further extend the claims process, since once the case was remanded and the deputy commissioner made a determination on the issue, the employer/carrier may be able to request another hearing before the OALJ on the section 8(f) issue.

For these reasons, the Department has not implemented the changes suggested in the comments. However, substantial modifications in the application process described in § 702.321(b) have been made in response to the concerns. These changes are consistent with the law and are designed to clarify the period for submission of the documentation and eliminate confusion, avoid unnecessary delay in the informal conference stage which could work hardship on claimants, and better define the nature of the absolute defense for failure to raise and adequately document the request for section 8(f) relief.

First, the 90-day period for submission of a fully documented application has been eliminated. Instead of a set period established for all cases, the final rules call for a period fixed by the deputy commissioner according to the circumstances of each case. In certain circumstances, such as where all parties are notified that the issue of permanency will be addressed at the informal conference, the final rules specify that the final date for the submission of the section 8(f) application is at the informal conference. Where the issue is first raised during the informal conference and the employer/carrier could not reasonably be expected to have gathered the necessary documentation to support a section 8(f) application, the date will be fixed according to the circumstances of the case. Factors to be considered by the deputy commissioner in fixing the date of submission include the effect on the claimant of any delay in submission to the OALJ, the difficulty in obtaining the necessary evidence, and the reasons given by the employer in support of any request for additional time.

Second, the final rules clarify that the absolute defense is an affirmative defense and, as such, it must be raised and specifically pleaded by the Director before the OALJ.

Along with comments requesting clarification of the nature of the absolute defense, several comments noted that in many instances, employers would be unable to comply with the documentation requirements because, for example, a claimant involved in third party litigation refused to cooperate with the employer. Under these circumstances, the commentators noted, it would be unfair to penalize the employer by raising the absolute defense. While the Department recognizes that compliance may not always be possible, no change is necessary in the final rules to address this problem. As noted previously, experience with the interim rules for the past year has shown that employers have not experienced major difficulty in obtaining necessary documentation. Further, even in cases where the problem may arise, the employer would not be penalized: where the employer was not aware, due to lack of information, that section 8(f) would be an issue, the absolute defense would not apply. Thus, where the application was denied because of the inaccessible evidence, the employer would not be barred by the absolute defense from seeking section 8(f) relief, and could take the issue before an administrative law judge, whose deposition authority could be invoked to gain access to the evidence.

Administrative Matters

Other concerns raised by the comments regarding the 8(f) procedures are addressed below:

Time limits

Several comments suggested that rules include time limits for decisions on the section 8(f) application. The Department, through internal performance standards, already requires a timely response to applications. Experience has shown that, except where employers fail to submit required documentation, the Department has been able to address requests for section 8(f) relief in a timely fashion.

Approval authorization

Some comments proposed that the deputy commissioner be authorized to approve as well as deny section 8(f) applications. Although deputy commissioners can now approve section 8(f) relief in hearing loss claims, at this time all other applications must be reviewed by the OWCP Longshore Division national office staff. This review does not, as stated by those suggesting the change, substantially delay the process, as all requests for review are acted upon within two weeks of receipt. This central office review does, however, ensure unformity in application and consistency of policy and is retained.

Physicians, Health Care Providers, and Claimant Representatives

The 1984 Amendments to the Longshore Act authorized the Secretary to prepare a list of medical care providers (including physicians) and claimant's representatives who have been disqualified from providing medical care and/or services or representation services to injured employees. The amendments also strengthened the Secretary's authority to regulate the activities of such persons to ensure that the rights of the injured employees or their survivors are adequately protected. Several comments were received concerning these provisions including questions as to

—Whether the Secretary has the authority to excuse the failure to submit medical reports;
—Whether the ALJ, in addition to the deputy commissioner, has the authority to suspend compensation for failure to undergo medical examination or treatment;
—What standard should be used to evaluate prevailing community medical charges; and
—Whether the deputy commissioner should be required to investigate all fee disputes.

These are discussed in turn below.

Failure to file reports

The Act provides, at section 7(d)(2), that the attending physician must file a medical report within ten days of treatment or the employer is not obligated to pay the bill. The deputy commissioner may excuse the failure to submit a report for good cause. The IFR did not change the previous § 702.422 regarding this point. One comment queried whether the employer must await a finding of fact before being relieved from the liability of medical costs. Such issue must be raised as a defense against the obligation, and a finding of fact would therefore be necessary.

Failure to undergo medical exam

Section 702.410 of the IFR authorized the deputy commissioner to order suspension of benefits for failure to undergo a medical examination. Several comments questioned whether an ALJ also had that authority, since it was not specifically mentioned in the IFR. The ALJ does have such authority, and § 702.410 has been amended to clarify this. See Longshore Act 7(d)(4), 33 U.S.C. 907(d)(4).

Prevailing community rate

Several comments suggested that existing state fee schedules should serve as prima facie evidence of the prevailing community rate for fee disputes. Section 702.413 provides that the agency medical director (changed to an Office of Workers' Compensation Programs district medical director in the final rules) or deputy commissioner must determine the prevailing community rate in medical fee disputes. While the Department recognizes the value of fee schedules in helping to establish the prevailing rate, it does not adopt them as the single criterion for determining the rate. In response to the comments received, however, the final rule has been changed and the phrase which was previously a part of § 702.413 (1984) which makes clear that such state fee schedules may be used as one criterion in making this determination, has been reinstated.

Investigation of fee disputes

Section 702.414 established the procedure for handling fee disputes. It permits the deputy commissioner to exercise discretion in determining whether to initiate a formal dispute process. Several comments suggested that the Office should be required to initiate the formal process whenever requested to do so by an employer. The Department declines to be bound to initiate a formal process where the assertions are patently frivolous or constitute a nuisance. The deputy commissioner will investiage any complaint received to the extent necessary, and, where such complaint is found to be meritorious, will institute the formal complaint process.

While the Department retains the right to determine when the facts warrant a formal investigation into medical fee disputes, it has clarified § 702.413 to provide that *any* interested party will be entitled to a hearing before an ALJ, including an employer who is ordered to pay but maintains the charge is excessive. The Department cautions that such actions as medical fee determinations cannot be taken unilaterally by any party, but must follow the process established by law and structured in the regulations.

Debarment

The 1984 Amendments authorized the Secretary to exclude physicians and other health care providers and claimant representatives from practicing under the Act, and specifies the grounds for debarment. The IFR described the procedures for debarring physicians (§ 702.431) and representatives (§ 702.131).

Two comments were received directly concerning the debarment process. One comment called for expanding the specific grounds for debarment of claimant representatives, and suggested that the Secretary should have the authority to debar for incompetence. Because the statute explicitly defines the grounds for debarment, however, the Department cannot expand the grounds through regulation.

Other comments suggested that employers be given the authority to appeal a finding by the deputy commissioner that debarment was not warranted in a particular case. The Department rejects this suggestion. The statute at section 7(c) gives to the Secretary the sole authority to debar physicians or claimant representatives. The regulations set forth the grounds for debarment as established by the Act and establish the procedures to be followed. Consistent with the statute, these regulations provide the right of hearing from an informal adverse decision only to the medical care provider or representative, e.g., the person directly affected. Allowing the employer to challenge this determination would, in effect, be placing the provider in double jeopardy, requiring that he/she first face the Department, and after, convincing the Department not to institute formal debarment proceedings, would have to face an inquiry before an ALJ initiated not by the Secretary but by an employer. Because the authority to initiate debarment procedures is given by law to the Director, OWCP, no change in the regulations on this point have been made.

Miscellaneous Subjects

Other subjects addressed in the comments include:

Hearing Loss

The IFR, at § 702.441, detailed procedures for claims for loss of hearing. Among other changes made by the 1984 Amendments was the requirement that properly administered audiograms are presumptive evidence of a hearing loss. To be properly administered, the Amendments require them to have been performed by a certified audiologist or otolaryngologist. In the Managers' Report, the legislative history clarifies this to allow qualified technicians to actually administer the test, as long as it is certified as correct and interpreted by an audiologist or otolaryngologist. One professional association objected to the use of technicians in performing hearing tests. The final rules remain unchanged, given the express direction of the Conference Managers that technicians be allowed to perform the examination.

The Amendments also required that a copy of the audiogram along with a statement that showed a loss of hearing be given to the employee in order to start the limitation period for notice and filing. The IFR, at § 702.212(a)(3) and § 702.221(b), respectively, implemented this provision. Several comments suggested the language be expanded to clarify that the report must also state that the loss is related to employment to start the running of limitation periods. These suggestions have been incorporated into the final rules, since they merely clarify the statutory requirement that the claimant must not only be aware of a disability but also of its relation to the employment.

Occupational Diseases

The Amendments made several changes regarding occupational diseases which do not immediately result in death or disability. Section 10 of the amended Act provides that in those cases where the job related disease does not become manifest until after retirement, compensation shall be paid based, not on the loss of earning capacity, but on the extent of impairment as determined by the American Medical Association's *Guides to Permanent Impairment*. The IFR provided a definition of retirement at § 702.601(c). Several comments noted that the definition in the IFR was different from that described in the preamble. To eliminate the ambiguity thus created and clarify the meaning, the final rules contain an amended definition of retirement. Section 702.604(b) was also clarified to ensure that the same limitation on benefits applied to death claims in occupational disease cases, as in all other death claims.

Liens on Compensation

One comment concerned the ability to enforce the provisions section 17 of the Act implemented in § 702.162 of the regulations, which allow a trust fund which pays disability benefits to a claimant while a claim is pending, a lien on the compensation benefits paid. The commentator stated that the provision of the IFR was not sufficient to recoup the entire lien from any lump-sum back recovery of benefits, but was limited to ten percent. A close reading of the section shows that the lien can be satisfied out of the entire past due compensation benefits which may be paid, and any excess can be recovered out of continuing benefits (limited to ten

percent of bi-weekly compensation). There is no need for a change in this provision.

Third Party Recovery

The Amendments provide that a claimant must obtain the agreement of an employer to any settlement agreement in a third party action for an amount less than that to which he/she would be entitled under the Act. In the alternative, the claimant must notify the employer of any judgement or settlement against a third party. Failure to obtain the consent or make the required notification relieves the employer of liability for compensation and medical benefits, even where payments have been made or entitlement acknowledged (see section 33(g) of the amended Act). One commentator noted that § 702.281 did not fully explain this. Accordingly, the final rules include additional language clarifying the responsibilities of the claimant in third party actions, consistent with the Amendments.

Effective date

The Department has determined that the public interest requires the immediate issuance of regulations in order to assure continued smooth implementation of the amended Longshore Act. The IFR will expire on February 3, 1986, unless extended or superceded by revised rules. Further delay in issuing the final rule is not in the best interest of the parties subject to the Longshore Act. It is essential, therefore, that these regulations become effective immediately in order to ensure compliance with the statute and effective adjudication of claims that are subject to the 1984 amendments to the Longshore Act. Because immediate issuance of this final regulation is required by the public interest in having a smooth implementation of the Longshore Act amendments, it shall become effective immediately instead of thirty days after publication. This determination is made pursuant to 5 U.S.C. 553(d)(3).

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 1215–0160.

Classification—Executive Order 12291

These final rules only implement the amendments to the Longshore Act and make certain technical corrections to the regulations as previously promulgated. They do not, in themselves, impose any additional requirements. Therefore, this is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

The Department believes that the rule will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act. Pub. L. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the final rules are only implementing this 1984 amendments to the Longshore Act and they do not, in themselves, impose any additional requirements upon small entities. On the contrary, these regulations implement those amendments which exclude many small entities from coverage under the Longshore Act, establish procedures whereby some small entities may seek an exemption from the statute, and eliminate the reporting requirements for all employers in cases of no lost time injuries. Accordingly, no regulatory impact analysis is required.

List of Subjects

20 CFR Part 701

Longshoremen, Workers' compensation.

20 CFR Part 702

Administrative practice and procedure, Claims, Insurance, Longshoremen, Vocational rehabilitation, and Workers' compensation.

20 CFR Part 703

Insurance, Longshoremen, Workers' compensation.

Accordingly, 20 CFR Parts 701, 702 and 703 as published in the **Federal Register** on January 3, 1985 (50 FR 384) are adopted as final with the changes noted below.

1. The citation of authorities for Parts 701, 702 and 703, continues to read as follows:

Authority: 5 U.S.C. 301; Reorg. Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 83 U.S.C. 939; 36 D.C. Code 501 et seq.; 42 U.S.C. 1651 et seq.; 43 U.S.C. 1331; 5 U.S.C. 8171, et seq.; Secretary's Order 6–84, 49 FR 32473; Employment Standards Order 78–1, 43 FR 51469.

PART 701—GENERAL; ADMINISTERING AGENCY DEFINITIONS AND USE OF TERMS

2. Section 701.101(b) is revised to read as follows:

Rules in This Subchapter

§ 701.101 Scope of this subchapter and Subchapter B.

* * * * *

(b) The regulations also apply to claims filed under the District of Columbia Workmen's Compensation Act (DCCA). That law applies to all claims for injuries or deaths based on employment events that occurred prior to July 26, 1982, the effective date of the District of Columbia Workers' Compensation Act.

3. In § 701.301, paragraph (a)(12)(iii) is revised to read as follows:

Terms Used in This Subchapter

§ 701.301 Definitions and use of terms.

(a) * * *

(iii) Nor does this term include the following individuals (whether or not the injury occurs over the navigable waters of the United States) where it is first determined that they are covered by a state workers' compensation act:

(A) Individuals employed exclusively to perform office clerical, secretarial, security, or data processing work (but not longshore cargo checkers and cargo clerks);

(B) Individuals employed by a club (meaning a social or fraternal organization whether profit or nonprofit), camp, recreational operation (meaning any recreational activity, including but not limited to scuba diving, commercial rafting, canoeing or boating activities operated for pleasure of owners, members of a club or organization, or renting, leasing or chartering equipment to another for the latter's pleasure), restaurant, museum or retail outlet;

(C) Individuals employed by a marina, provided they are not engaged in its construction, replacement or expansion, except for routine maintenance such as cleaning, painting, trash removal, housekeeping and small repairs;

(D) Employees of suppliers, vendors and transporters temporarily doing business on the premises of a covered employer, provided they are not performing work normally performed by employees of the covered employer;

(E) Aquaculture workers, meaning those employed by commercial enterprises involved in the controlled cultivation and harvest of aquatic plants and animals, including the cleaning, processing or canning of fish and fish products, the cultivation and harvesting of shellfish, and the controlled growing and harvesting of other aquatic species;

(F) Individuals engaged in the building, repairing or dismantling of recreational vessels under 65 feet in length. For purposes of this subparagraph "recreational vessel" means a vessel manufactured or operated primarily for pleasure, or rented, leased or chartered by another for the latter's pleasure, and "length" means a straight line measurement of the overall length from the foremost part of the vessel to the aftmost part of the vessel, measured parallel to the center line. The measurement shall be from end to end over the deck, excluding sheer.

PART 702—ADMINISTRATION AND PROCEDURE

4. In § 702.101 the entries for District Nos. 11 and 12 are removed and reserved, and the entries for District Nos. 10 and 14 are revised to read as follows:

§ 702.101 Establishment of Compensation Districts.

* * * * *

District No. 10. Comprises the States of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio and Wisconsin; with headquarters in Chicago, Illinois.

District No. 11 [Reserved]

District No. 12 [Reserved]

* * * * *

District No. 14. Comprises the States of Alaska, Colorado, Idaho, Montana, North Dakota, South Dakota, Oregon, Utah, Washington and Wyoming; with headquarters in Seattle, Washington.

* * * * *

5. In § 702.145, paragraph (b) is revised to read as follows:

§ 702.145 Use of the special fund.

* * * * *

(b) Under section 8(f) of the Act (Second Injuries), In any case in which an employee having an existing permanent partial disability suffers injury, the employer shall provide compensation for such disability as is found to be attributable to that injury based upon the average weekly wages of the employee at the time of injury. If, following an injury falling within the provisions of section 8(c)(1)–(20), the employee with the pre-existing permanent partial disability becomes permanently and totally disabled after the second injury, but such total disability is found not to be due solely to his second injury, the employer (or carrier) shall be liable for compensation as provided by the provisions of section 8(c)(1)–(20) of the Act, 33 U.S.C. 908(c)(1)–(20) or for 104 weeks, whichever is greater. However, if the injury is a loss of hearing covered by section 8(c)(13), 33 U.S.C. 908(c)(13), the liability shall be the lesser of these periods. In all other cases of a second injury causing permanent total disability (or death), wherein it is found that such disability (or death) is not due solely to the second injury, and wherein the employee had a pre-existing permanent partial disability, the employer (or carrier) shall first pay compensation under section 8(b) or (e) of the Act, 33 U.S.C. 908(b) or (e), if any is payable thereunder, and shall then pay 104 weeks compensation for such total disability or death, and none otherwise. If the second injury results in permanent partial disability, and if such disability is compensable under section 8(c)(1)–(20) of the Act, 33 U.S.C. 908(c)(1)–(20), but the disability so compensable did not result solely from such second injury, and the disability so compensable is materially and substantially greater than that which would have resulted from the second injury alone, then the employer (or carrier) shall only be liable for the amount of compensation provided for in section 8(c)(1)–(20) that is attributable to such second injury, or for 104 weeks, whichever is greater. However, if the injury is a loss of hearing covered by section 8(c)(13), 33 U.S.C. 908(c)(13), the liability shall be the lesser of these periods. In all other cases wherein the employee is permanently and partially disabled following a second injury, and wherein such disability is not attributable solely to that second injury, and wherein such disability is materially and substantially greater than that which would have resulted from the second injury alone, and wherein such disability following the second injury is not compensable under section 8(c)(1)–(20) of the Act, then the employer (or carrier) shall be liable for such compensation as may be appropriate under section 8(b) or (e) of the Act, 33 U.S.C. 908(b) or (e), if any, to be followed by a payment of compensation for 104 weeks, and none other. The term "compensation" herein means money benefits only, and does not include medical benefits. The procedure for determining the extent of the employer's (or carrier's) liability under this paragraph shall be as provided for in the adjudication of claims in Subpart C of this Part 702. Thereafter, upon cessation of payments which the employer is required to make under this paragraph, if any additional compensation is payable in the case, the deputy commissioner shall forward such case to the Director for consideration of an award to the person or persons entitled thereto out of the special fund. Any such award from the special fund shall be by order of the Director or Acting Director.

* * * * *

6. In §702.146, paragraph (c) is revised to read as follows:

§ 702.146 Source of the special fund.

* * * * *

(c) The Director annually shall assess an amount against insurance carriers and self-insured employers authorized under the Act and Part 703 of this subchapter to replenish the fund. That total amount to be charged all carriers and self-insurers to be assessed shall be based upon an estimate of the probable expenses of the fund during the calendar year. The assessment against each carrier and self-insurer shall be based upon (1) the ratio of the amount each paid during the prior calendar year for compensation in relation to the amount all such carriers of self-insurers paid during that period for compensation, and (2) the ratio of the amount of payments made by the special fund for all cases being paid under section 8(f) of the Act, 33 U.S.C. 908(f), during the preceding calendar year which are attributable to the carrier or self-insurer in relation to the total of such payments during such year attributable to all carriers and self-insurers. The resulting sum of the percentages from paragraphs (c) (1) and (2) of this section will be divided by two, and the resulting percentage multiplied by the probable expenses of the fund. The Director may, in his or her discretion, condition continuance or renewal of authorization under Part 703 upon prompt payment of the assessment. However, no action suspending or revoking such authorization shall be taken without affording such carrier or self-insurer a hearing before the Director or his/her designee.

7. In § 702.162, paragraphs (a) and (h) are revised to read as follows:

§ 702.162 Liens on compensation authorized under special circumstances.

(a) Pursuant to section 17 of the Act, 33 U.S.C. 917, when a trust fund which complies with section 302(c) of the Labor-Management Relations Act of 1947, 29 U.S.C. 186(c) [LMRA], established pursuant to a collective bargaining agreement in effect between

an employer and an employee entitled to compensation under this Act, has paid disability benefits to an employee which the employee is legally obligated to repay by reason of his entitlement to compensation under this Act, a lien shall be authorized on such compensation in favor of the trust fund for the amount of such payments.

* * * * *

(h) In the event that either the deputy commissioner or the administrative law judge is not satisfied that the trust fund qualifies for a lien under section 17, the deputy commissioner or administrative law judge may require further evidence including but not limited to the production of the collective bargaining agreement, trust agreement or portions thereof.

* * * * *

8. Section 702.172 is revised to read as follows:

§ 702.172 Certification; definitions.

For purposes of §§ 702.171 through 702.175 dealing with certification of small vessel facilities, the following definitions are applicable.

(a)(1) "Small vessel" means only those vessels described in section 3(d)(3) of the Act, 33 U.S.C. 903(d)(3), that is:

(i) A commercial barge which is under 900 lightship displacement tons (long); or

(ii) A commercial tugboat, towboat, crewboat, supply boat, fishing vessel or other work vessel which is under 1,600 tons gross.

(2) For these purposes: (i) One gross ton equals 100 cubic feet, as measured by the current formula contained in the Act of May 6, 1894 as amended through 1974 (46 U.S.C. 77); (ii) one long ton equals 2,240 lbs; and (iii) "Commercial" as it applies to "vessel" means any vessel engaged in commerce but does not include military vessels or Coast Guard vessels.

(b) "Federal Maritime Subsidy" means the construction differential subsidy (CDS) or operating differential subsidy under the Merchant Marine Act of 1936 (46 U.S.C. 1101 et seq.).

(c) "facility" means an operation of an employer at a particular contiguous geographic location.

9. In § 702.174, paragraphs (a)(1) and (d)(2) are revised to read as follows:

§ 702.174 Exemptions; necessary information.

(a) * * *

(1) Name, location, physical description and a site plan or aerial photograph of the facility for which an exemption is sought.

* * * * *

(d) * * *

(2) A notice, where applicable, at the entrances to all areas to which the exemption does not apply.

10. In § 702.175, paragraph (a) is revised to read as follows:

§ 702.175 Effect of work on excluded vessels; reinstatement of certification.

(a) When a vessel other than a small commercial vessel, as defined in § 702.172, enters a facility which has been certified as exempt from coverage, the exemption shall automatically terminate as of the date such a vessel enters the facility. The exemption shall also terminate on the date a contract for a Federal maritime subsidy is entered into, and, in the situation where the facility undertakes to build a vessel other than a small vessel, when the construction first takes on the characteristics of a vessel, i.e., when the keel is laid. All duties, obligations and requirements imposed by the Act, including the duty to secure compensation liability as required by sections 4 and 32 of the Act, 33 U.S.C. 904 and 932, and to keep records and forward reports, are effective immediately. The employer shall notify the Director or his/her designee immediately where this occurs.

10A. In § 702.201, paragraph (b) is revised to read as follows:

§ 702.201 Reports from employers of employee's injury or death.

* * * * *

(b) No report shall be filed unless the injury causes the employee to lose one or more shifts from work. However, the employer shall keep a record containing the information specified in § 702.202. Compliance with the current OSHA injury record keeping requirements at 29 CFR 1904 will satisfy the record keeping requirements of this section for no lost time injuries.

11. In § 702.211(b), paragraphs (1) and (4) are revised to read as follows:

§ 702.211 Notice of employee's injury or death; designation of responsible official.

* * * * *

(b) In order to facilitate the filing of notices, each employer shall designate at least one individual responsible for receiving notices of injury or death; this requirement applies to all employers. The designation shall be by position and the employer shall provide the name and/or position, exact location and telephone number of the individual to all employees by the appropriate method described below.

(1) *Type of individual.* Designees must be a first line supervisor (including a foreman, hatchboss or timekeeper), local plant manager, personnel office official, company nurse or other individual traditionally entrusted with this duty, who is located full-time on the premises of the covered facility. The employer must designate at least one individual at each place of employment or one individual for each work crew where there is no fixed place of employment (in that case, the designation should always be the same position for all work crews).

* * * * *

(4) *Effect of failure to designate.* Where an employer fails to properly designate and to properly publish the name and/or position of the individual authorized to receive notices of injury or death, such failure shall constitute satisfactory reasons for excusing the employee/claimant's failure to give notice as authorized by section 12(d)(3)(ii) of the Act, 33 U.S.C. 912(d)(3)(ii).

12. In § 702.212, paragraph (a)(3) is revised to read as follows:

§ 702.212 Notice; when given for certain occupational diseases.

(a) * * *

(3) In the case of claims for loss of hearing, the date the employee receives an audiogram, with the accompanying report which indicates the employee has suffered a loss of hearing that is related to his or her employment. (See § 702.441).

* * * * *

13. Section 702.216 is revised to read as follows:

§ 702.216 Effect of failure to give notice.

Failure to give timely notice to the employer's designated official shall not bar any claim for compensation if: (a) The employer, carrier, or designated official had actual knowledge of the injury or death; or (b) the deputy commissioner or ALJ determines the employer or carrier has not been prejudiced; or (c) the deputy commissioner excuses failure to file notice. For purposes of this subsection, actual knowledge shall be deemed to exist if the employee's immediate supervisor was aware of the injury and/or in the case of a hearing loss, where the employer has furnished to the employee an audiogram and report which indicates a loss of hearing. Failure to give notice shall be excused by the deputy commissioner if: a) notice, while not given to the designated official, was given to an official of the employer or carrier, and no prejudice resulted; or b) for some other satisfactory reason, notice could not be

given. Failure to properly designate and post the individual so designated shall be considered a satisfactory reason. In any event, such defense to a claim must be raised by the employer/carrier at the first hearing on the claim.

14. In § 702.221 paragraph (b) is revised to read as follows:

§ 702.221 Claims for compensation; time limitations.

* * * * *

(b) In the case of a hearing loss claim, the time for filing a claim does not begin to run until the employee receives an audiogram with the accompanying report which indicates the employee has sustained a hearing loss that is related to his or her employment. (See § 702.441).

15. In 702.241, paragraph (c) is revised to read as follows:

§ 702.241 Definitions and supplementary information.

* * * * *

(c) If a settlement application is first submitted to an ALJ, the thirty day period mentioned in paragraph (f) of this section does not begin until five days before the date the formal hearing is set. This rule does not preclude the parties from submitting the application at any other time such as (1) after the case is referred for hearing, (2) at the hearing, or (3) after the hearing but before the ALJ is issues a decision and order. Where a case is pending before the ALJ but not set for a hearing, the parties may request the case be remanded to the deputy commissioner for consideration of the settlement.

16. In § 702.242, paragraphs (b)(5) and (7) are revised to read as follows:

§ 702.242 Information necessary for a complete settlement application.

* * * * *

(b) * * *

(5) A current medical report which fully describes any injury related impairment as well as any unrelated conditions. This report shall indicate whether maximum medical improvement has been reached and whether further disability or medical treatment is anticipated. If the claimant has already reached maximum medical improvement, a medical report prepared at the time the employee's condition stabilized will satisfy the requirement for a current medical report. A medical report need not be submitted with agreements to settle survivor benefits unless the circumstances warrant it.

* * * * *

(7) If the settlement application covers medical benefits an itemization of the amount paid for medical expenses by year for the three years prior to the date of the application. An estimate of the claimant's need for future medical treatment as well as an estimate of the cost of such medical treatment shall also be submitted which indicates the inflation factor and/or the discount rate used, if any. The adjudicator may waive these requirements for good cause.

17. In § 702.243, paragraphs (a), (c), (f), and (g) are revised to read as follows:

§ 702.243 Settlement application; how submitted, how approved, how disapproved, criteria.

(a) When the parties to a claim for compensation, including survivor benefits and medical benefits, agree to a settlement they shall submit a complete application to the adjudicator. The application shall contain all the information outlined in § 702.242 and shall be sent by cetified mail, return receipt requested or submitted in person, or by any other delivery service with proof of delivery to the adjudicator. Failure to submit a complete application shall toll the thirty day period mentioned in section 8(i) of the Act, 33 U.S.C. 908(i), until a complete application is received.

* * * * *

(c) If the adjudicator disapproves a settlement application, the adjudicator shall serve on all parties a written statement or order containing the reasons for disapproval. This statement shall be served by certified mail within thirty days of receipt of a complete application (as described in § 702.242.) if the parties are represented by counsel. If the disapproval was made by a deputy commissioner, any party to the settlement may request a hearing before an ALJ as provided in sections 8 and 19 of the Act, 33 U.S.C. 908 and 919, or an amended application may be submitted to the deputy commissioner. If, following the hearing, the ALJ disapproves the settlement, the parties may: (1) Submit a new application, (2) file an appeal with the Benefits Review Board as provided in section 21 of the Act, 33 U.S.C. 921, or (3) proceed with a hearing on the merits of the claim. If the application is initially disapproved by an ALJ, the parties may (1) submit a new application or (2) proceed with a hearing on the merits of the claim.

* * * * *

(f) When presented with a settlement, the adjudicator shall review the application and determine whether, considering all of the circumstances, including, where appropriate, the probability of success if the case were formally litigated, the amount is adequate. The criteria for determining the adequacy of the settlement application shall include, but not be limited to:

(1) The claimant's age, education and work history;

(2) The degree of the claimant's disability or impairment;

(3) The availability of the type of work the claimant can do;

(4) The cost and necessity of future medical treatment (where the settlement includes medical benefits).

* * * * *

(g) In cases being paid pursuant to a final compensation order, where no substantive issues are in dispute, a settlement amount which does not equal the present value of future compensation payments commuted, computed at the discount rate specified below, shall be considered inadequate unless the parties to the settlement show that the amount is adequate. The probability of the death of the beneficiary before the expiration of the period during which he or she is entitled to compensation shall be determined according to the most current United States Life Table, as developed by the United States Department of Health and Human Services, which shall be updated from time to time. The discount rate shall be equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of 52 weeks U.S. Treasury Bills settled immediately prior to the date of the submission of the settlement application.

18. In § 702.281, paragraph (b) is revised to read as follows:

§ 702.281 Third party action.

* * * * *

(b) Where the claim or legal action instituted against a third party results in a settlement agreement which is for an amount less than the compensation to which a person would be entitled under this Act, the person (or the person's representative) must obtain the prior, written approval of the settlement from the employer and the employer's carrier before the settlement is executed. Failure to do so relieves the employer and/or carrier of liability for compensation described in section 33(f) of Act, 33 U.S.C. 933(f) and for medical benefits otherwise due under section 7 of the Act, 33 U.S.C. 907, regardless of whether the employer or carrier has made payments of acknowledged entitlement to benefits under the Act. The approval shall be on a form provided by the Director and filed, within thirty days after the settlement is

entered into, with the deputy commissioner who has jurisdiction in the district where the injury occurred.

19. Section 702.321 is revised to read as follows:

§ 702.321 Procedures for determining applicability of section 8(f) of the Act.

(a) *Application: filing, service, contents.* (1) an employer or insurance carrier which seeks to invoke the provisions of section 8(f) of the Act must request limitation of its liability and file, in duplicate, with the deputy commissioner a fully documented application. A fully documented application shall contain the following information: (i) A specific description of the pre-existing condition relied upon as constituting an existing permanent partial disability; (ii) the reasons for believing that the claimant's permanent disability after the injury would be less were it not for the pre-existing permanent partial disability or that the death would not have ensued but for that disability. These reasons must be supported by medical evidence as specified in (iv) below; (iii) the basis for the assertion that the pre-existing condition relied upon was manifest in the employer; and (iv) documentary medical evidence relied upon in support of the request for section 8(f) relief. This medical evidence shall include, but not be limited to, a current medical report establishing the extent of all impairments and the date of maximum medical improvement. If the claimant has already reached maximum medical improvement, a report prepared at that time will satisfy the requirement for a current medical report. If the current disability is total, the medical report must explain why the disability is not due solely to the second injury. If the current disability is partial, the medical report must explain why the disability is not due solely to the second injury and why the resulting disability is materially and substantially greater than that which would have resulted from the subsequent injury alone. If the injury is loss of hearing, the pre-existing hearing loss must be documented by an audiogram which complies with the requirements of § 702.441. If the claim is for survivor's benefits, the medical report must establish that the death was not due solely to the second injury. Any other evidence considered necessary for consideration of the request for section 8(f) relief must be submitted when requested by the deputy commissioner or Director.

(2) If claim is being paid by the special fund and the claimant dies, an employer need not reapply for section 8(f) relief. However, survivor benefits will not be paid until it has been established that the death was due to the accepted injury and the eligible survivors have been identified. The deputy commissioner will issue a compensation order after a claim has been filed and entitlement of the survivors has been verified. Since the employer remains a party in interest to the claim, a compensation order will not be issued without the agreement of the employer.

(b) *Application: Time for filing.* (1) A request for section 8(f) relief should be made as soon as the permanency of the claimant's condition becomes known or is an issue in dispute. This could be when benefits are first paid for permanent disability, or at an informal conference held to discuss the permanency of the claimant's condition. Where the claim is for death benefits, the request should be made as soon as possible after the date of death. Along with the request for section 8(f) relief, the applicant must also submit all the supporting documentation required by this section, described in paragraph (a), of this section. Where possible, this documentation should accompany the request, but may be submitted separately, in which case the deputy commissioner shall, at the time of the request, fix a date for submission of the fully documented application. The date shall be fixed as follows: (i) where notice is given to all parties that permanency shall be an issue at an informal conference, the fully documented application must be submitted at or before the conference. For these purposes, notice shall mean when the issues of permanency is noted on the form LS–141, Notice of Informal Conference. All parties are required to list issue reasonably anticipated to be discussed at the conference when the initial request for a conference is made and to notify all parties of additional issues which arise during the period before the conference is actually held. (ii) Where the issue of permanency is first raised at the informal conference and could not have reasonably been anticipated by the parties prior to the conference, the deputy commissioner shall adjourn the conference and establish the date by which the fully documented application must be submitted and so notify the employer/carrier. The date shall be set by the deputy commissioner after reviewing the circumstances of the case.

(2) At the request of the employer or insurance carrier, and for good cause, the deputy commissioner, at his/her discretion, may grant an extension of the date for submission of the fully documented application. In fixing the date for submission of the application under circumstances other than described above or in considering any request for an extension of the date for submitting the application, the deputy commissioner shall consider all the circumstances of the case, including but not limited to: Whether the claimant is being paid compensation and the hardship to the claimant of delaying referral of the case to the Office of Administrative Law Judges (OALJ); the complexity of the issues and the availability of medical and other evidence to the employer; the length of time the employer was or should have been aware that permanency is an issue; and, the reasons listed in support of the request. If the employer/carrier requested a specific date, the reasons for selection of that date will also be considered. Neither the date selected for submission of the fully documented application nor any extension therefrom can go beyond the date the case is referred to the OALJ for formal hearing.

(3) Where the claimant's condition has not reached maximum medical improvement and no claim for permanency is raised by the date the case is referred to the OALJ, an application need not be submitted to the deputy commissioner to preserve the employer's right to later seek relief under section 8(f) of the Act. In all other cases, failure to submit a fully documented application by the date established by the deputy commissioner shall be an absolute defense to the liability of the special fund. This defense is an affirmative defense which must be raised and pleaded by the Director. The absolute defense will not be raised where permanency was not an issue before the deputy commissioner. In all other cases, where permanency has been raised, the failure of an employer to submit a timely and fully documented application for section 8(f) relief shall not prevent the deputy commissioner, at his/her discretion, from considering the claim for compensation and transmitting the case for formal hearing. The failure of an employer to present a timely and fully documented application for section 8(f) relief may be excused only where the employer could not have reasonably anticipated the liability of the special fund prior to the consideration of the claim by the deputy commissioner. Relief under section 8(f) is not available to an employer who fails to comply with section 32(a) of the Act, 33 U.S.C. 932(a).

(c) *Application: Approval, disapproval.* If all the evidence required by paragraph (a) was submitted with the application for section 8(f) relief and the

facts warrant relief under this section, the deputy commissioner shall award such relief after concurrence by the Associate Director, DLHWC, or his or her designee. If the deputy commissioner or the Associate Director or his or her designee finds that the facts do not warrant relief under section 8(f) the deputy commissioner shall advise the employer of the grounds for the denial. The application for section 8(f) relief may then be considered by an administrative law judge. When a case is transmitted to the Office of Administrative Law Judges the deputy commissioner shall also attach a copy of the application for section 8(f) relief submitted by the employer, and notwithstanding § 702.317(c), the deputy commissioner's denial of the application.

(Approved by the Office of Management and Budget under control number 1215–0160.)

20. In § 702.410, paragraph (c) is revised to read as follows:

§ 702.410 Duties of employees with respect to special examinations.

* * * * *

(c) Where an employee unreasonably refuses to submit to medical or surgical treatment, or to an examination by a physician selected by the employer, the deputy commissioner or administrative law judge may by order suspend the payment of further compensation during such time as the refusal continues. Except that refusal to submit to medical treatment because of adherence to the tenets of a recognized church or religious denomination as described in § 702.401(b) shall not cause the suspension of compensation.

21. Section 702.413 is revised to read as follows:

§ 702.413 Fees for medical services; prevailing community charges.

All fees charged by medical care providers for persons covered by this Act shall be limited to such charges for the same or similar care (including supplies) as prevails in the community in which the medical care provider is located and shall not exceed the customary charges of the medical care provider for the same or similar services. Official state medical fee schedules for workers' compensation charges may be used as guidelines in determining the prevailing community rate where available and to the extent appropriate. The opinion of the OWCP district medical director that a charge by a medical care provider disputed under the provisions of § 702.414 exceeds the charge which prevails in the community in which said medical care provider is located shall constitute sufficient evidence to warrant further proceedings pursuant to § 702.414 and to permit the Director to direct the claimant to select another medical provider for care to the claimant.

22. Section 702.414 is revised to read as follows:

§ 702.414 Fees for medical services; unresolved disputes on prevailing charges.

(a) The Director may, upon written complaint of an interested party, or upon the Director's own initiative, investigate any medical care provider or any fee for medical treatment, services, or supplies that appears to exceed prevailing, community charges for similar treatment, services or supplies or the provider's customary charges. Such investigation may initially be conducted informally through contact of the medical care provider by the district medical director. If this informal investigation is unsuccessful further proceedings may be undertaken. These proceedings may include, but not be limited to: An informal conference involving all interested parties; agency interrogatories to the pertinent medical care provider; and issuance of subpoenas duces tecum for documents having a bearing on the dispute.

(b) The failure of any medical care provider to present any evidence required by the Director pursuant to this section without good cause shall not prevent the Director from making findings of fact.

(c) After any proceeding under this section the Director shall make specific findings on whether the fee exceeded the prevailing community charges or the provider's customary charges and provide notice of these findings to the affected parties.

(d) The Director may suspend any such proceedings if after receipt of the written complaint the affected parties agree to withdraw the controversy from agency consideration on the basis that such controversy has been resolved by the affected parties. Such suspension, however, shall be at the discretion of the Director.

Section 702.415 is revised to read as follows:

§ 702.415 Fees for medical services; unresolved disputes on charges; procedure.

After issuance of specific findings of fact and proposed action by the Director as provided in § 702.414 any affected provider employer or other interested party has the right to seek a hearing pursuant to section 556 of Title 5, United States Code. Upon written request for such a hearing, the matter shall be referred by the Deputy Commissioner to the OALJ for formal hearing in accordance with the procedures in subpart C of this part. If no such request for a hearing is filed with the deputy commissioner within thirty (30) days the findings issued pursuant to § 702.414 shall be final.

In § 702.601, paragraph (c) is revised to read as follows:

Subpart F—Occupational Disease Which Does Not Immediately Result in Death or Disability

§ 702.601 Definitions.

* * * * *

(c) *Retirement.* For purposes of this subpart, retirement shall mean that the claimant, or decedent in cases involving survivor's benefits, has voluntarily withdrawn from the workforce and that there is no realistic expectation that such person will return to the workforce.

In § 702.604, paragraph (b) is revised to read as follows:

§ 702.604 Determining the amount of compensation for occupational disease claims which become manifest after retirement.

* * * * *

(b) If the claim is for death benefits and the time of injury occurs after the decedent has retired, compensation shall be the percent specified in section 9 of the Act, 33 U.S.C. 909, times the payrate determined according to § 702.603. Total weekly death benefits shall not exceed one fifty-second part of the decedent's average annual earnings during the fifty-two week period preceding retirement, such benefits shall be subject to the limitation provided for in section 6(b)(1) of the Act, 33 U.S.C. 906(b)(1).

Signed at Washington, D.C., this 29th day of January, 1986.

William E. Brock,

Secretary of Labor.

[FR Doc. 86–2371 Filed 1–31–86; 8:45 am]

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Monday, February 3, 1986

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1985. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1984 to March 31, 1985. The CFR volume issued as of Apr. 1, 1984, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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February 6	February 21	March 10	March 24	April 7	May 7
February 7	February 24	March 10	March 24	April 8	May 8
February 10	February 25	March 12	March 27	April 11	May 12
February 11	February 26	March 13	March 28	April 14	May 12
February 12	February 27	March 14	March 31	April 14	May 13
February 13	February 28	March 17	March 31	April 14	May 14
February 14	March 3	March 17	March 31	April 15	May 15
February 18	March 5	March 20	April 4	April 21	May 19
February 19	March 6	March 21	April 7	April 21	May 20
February 20	March 7	March 24	April 7	April 21	May 21
February 21	March 10	March 24	April 7	April 22	May 22
February 24	March 11	March 26	April 10	April 25	May 27
February 25	March 12	March 27	April 11	April 28	May 27
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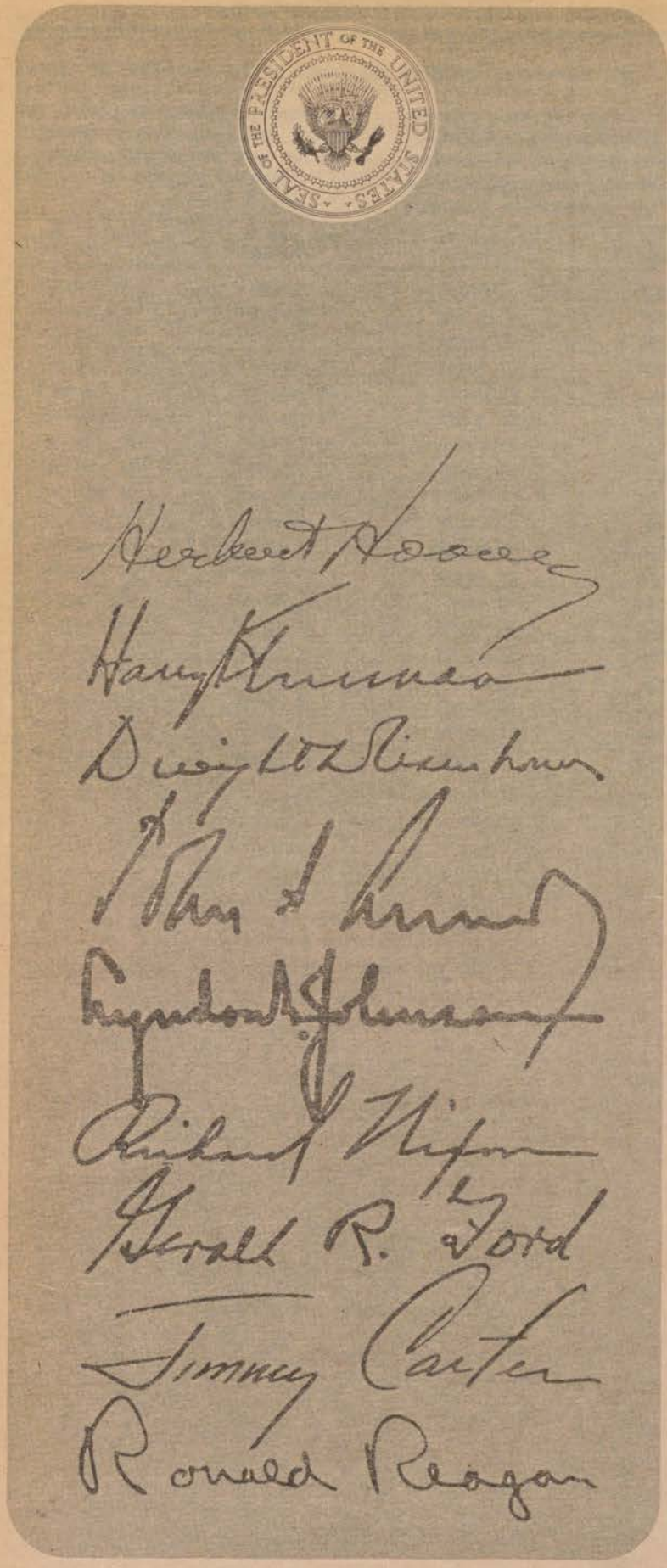

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